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SOME OBSERVATIONS

UPON THE LAW OF

ANCIENT DEMESNE,

With suggestions as to the Origin of the families of Brewer, Brito, Hardwick, and Cavendish, the Ancient Lords of the Manor of Chesterfield, in the County of Derby, arising upon an examination of the Archives of that Borough.

BY

RYM YEATMAN,

OF LINCOLN'S INN AND OF SHEFFIELD, ESQ., BARRISTER-AT-LAW,

AUTHOR OF THE HISTORY OF THE COMMON LAW OF GREAT BRITAIN AND GAUL; AN INTRODUCTION TO EARLY ENGLISH HISTORY; THE MAYOR'S COURT ACT, 1867; AN INTRODUCTION TO THE HISTORY OF THE HOUSE OF GLANVILLE; A TREATISE ON THE LAW OF TRADEMARKS; THE HISTORY OF THE HOUSE OF ARUNDEL; THE ORIGIN OF THE NATIONS OF WESTERN EUROPE; THE RECORDS OF CHESTERFIELD, &c., &c.

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THE Author, at the request of Mr. Alderman GEE, the present Mayor of Chesterfield, undertook to examine the Records of that Borough, with a view to ascertain whether there still remained amongst them any which were of value to the Borough in its Municipal character or of general historical interest; and finding a great number of charters of real value and importance, at Mr. Gee's desire they were embodied in a volume, recently published under his authority, entitled "The Records of Chesterfield."

In the course of his labours, and in order fully to understand the nature and bearing of the documents, the author was compelled to examine with some care the few legal decisions extant touching this branch of the law—a branch which (though still existing) has fallen into disuse for many centuries, so that no two writers upon the subject are fully agreed upon its purport and effect, and the judges are confessedly at sea upon it.

The author found in the course of his researches many remarkable facts relating to the history of the early lords of the borough, which supplement, and in some cases correct, the suggestions and statements of his recent work—the history of the house of Arundel—he determined, therefore, to publish the present pamphlet.

And first, with regard to the law affecting the borough, the more important subject since the consideration and development of it must exercise a direct influence upon other cities of a similar tenure.

To Mr. John Cutts, the learned Town Clerk of Chesterfield, the author is indebted for having received every possible facility, within the limits of safety, to inspect and examine the Records still remaining in his charge. As Town Clerk, Mr. Cutts himself in the year 1857, shortly after his appointment, took the wise precaution of causing to be printed a list of "all charters, deeds, books, books of account, and all documents and effects belonging to the Corporation of Chesterfield" at that date, an abstract of which will be found printed in the Records of Chesterfield. Every one of these charters and documents are now in his custody and possession, and were produced to

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the author. All those—the great majority of them—which appeared to be of value either to the Corporation and Burgesses, or of interest to historical students, have been printed in that work.

That this list is far, very far, short of what the Corporation possessed about a hundred years ago is painfully evident from the list also printed, entitled "A Schedule of Papers in the Corporation chest, 1789," which the author, through the kindness of Mr. G. S. Cockayne, Lancaster Herald, found amongst the late Dr. Pegge's papers, now deposited in the Heralds' College. This list is printed, not only to supply all the evidence at present available of the contents of the lost charters, but in the hope that by this publicity others may be enabled to follow the excellent example of Mr. Alderman Gee, in restoring its lost charters to the Borough. Considering the high reputation of Dr. Pegge as a careful and skilful genealogist, the town of Chesterfield is fortunate in possessing such good secondary evidence of the contents of the lost charters, and although the notices are but too frequently only scant and fragmentary, still, they incidentally convey information of the highest value and interest, which is not now to be obtained from any other source. This list also furnishes evidence of a great loss of especial significance. From a note of Dr. Pegge's to No. 45, "The old transcript of King John's Charter to Wm. Brewer, Ao. 17," it appears that at that period the Black Book of Chesterfield was in existence, for a comparison of the transcript with the copy entered in the Black Book is made, and it is declared to be "fuller." Few Corporations are so fortunate as to have possession of these Black or Red Books, as they were sometimes called, and it is remarkable to find that the Chesterfield book was existing within so short a period, and, indeed, it affords a hope that it yet may be discovered and restored.

The great Red Book of the town of Nottingham existed till the year 1724, when a calamitous fire occured in the Town Clerk's office and consumed it with many other precious Records. Fortunately, however, valuable abstracts had been made by several of the Town Clerks, and it is from these sources that the town of Nottingham depends for much of the evidence of the earlier Charters and customs affecting it; in this respect Chesterfield has a great advantage, since, thanks to Mr. Gee, it now possesses a perfect and remarkable series of Original Royal Charters. The author was unable to find any abstract or account of the Chesterfield Black Book amongst Dr.

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Pegge's papers, or the very valuable collection of the late Mr. Swift, which, through the courtesy of his sons, he had an opportunity of inspecting, but from the note before mentioned by Dr. Pegge it is evident that it contained information of the highest value; possibly an abstract by him or by some other antiquary may be existing elsewhere, and if it should be discovered it is hoped that a copy may be communicated to the Borough. This book would, no doubt, contain many Charters, the originals of which are now lost, including, perhaps, the Charter of William Brewer, the elder, which is referred to in subsequent documents, and possibly it would contain the only existing evidence of their contents; we might also hope to learn many facts of interest relating to the laws and customs of the Borough, which, owing to the fact that it had no Court of Record, are now lost.

This loss, however, can in some measure be supplied by the aid of Nottingham, which having had a Court of Record at least as early as 1303, and probably much earlier, has preserved in a durable form a great corpus of Municipal law of great value and interest, and from which a few passages illustrating points of particular value are here cited. They directly concern the town of Chesterfield, because by a singular circumstance we are without any information in the Royal Charters of what nature were the Chesterfield customs, each and all of them referring to the Nottingham customs and declaring them to be similar. This omission is, however, in a great measure supplied by the curious series of Charters, commencing with Wake's Charter and followed by Gryssop's composition, and that of the date of Queen Elizabeth, terminating with the award of the Earl of Shrewsbury, which specify many of the customs. It is, however, very curious that so little is expressed in the Royal Charters since the County in which Chesterfield is situated is not Nottingham, although at the time of the Conquest, and for long after, both Nottingham and Derby were under the control of the same Earl (Tofti), and the same Sheriff (Hugh fil Baldric, a member of the great family of Toesni, or Todini, whose connections, the Albinis, held feudal sway over the neighbouring counties of Lincoln, Leicester, and Rutland). Wake's Charter, however, whilst it recites several special customs, but only some of those affecting the Borough, like the Royal Charters expressly includes the Nottingham customs.

It is said by Glover that the Manor of Chesterfield had a Court of Record for actions under £20, but the author has not been able to

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find any trace of its records, and certainly no Courts are now held, nor has he been able to discover at the Record Office any Court Rolls of the Manor whilst it was in the hands of the Crown, with one exception, of the 2nd and 3rd Philip and Mary, when a great Court of the King and Queen was held there (Portfolio No. 6., No. 63); it is, however, very meagre in detail, and does not disclose the form of the business—it only contains 6 entries—Sir James Foljambe was fined four shillings for default of doing the service that he owed, that is for absenting himself from the Court. Ralf Leake and John Rhodes were fined the same amount, and John Bullock was fined twopence, whilst Thomas Gyles and Edward Bannall were each fined sixpence with respect to a dealing with a moiety of a messuage, toft, &c., in Bagthorpe.

With this exception the author has been unable to see any of the early Court Rolls, and he is informed that in all probability they have been destroyed. Still copies must be in existence somewhere, and it would be very interesting to learn the nature of the process and course of procedure.

In considering the history of the Borough of Chesterfield there are two leading considerations which ought to be kept separate, since they are not, under ordinary circumstances, identical nor necessarily dependent one upon the other (although, probably, in this case they are of generally the same character), that is, the History of the Manor of Chesterfield and of the Borough; and, as the charters shew, the rights of the one were frequently in conflict with those of the other. It is quite possible that the Borough and Manor are not coterminous, indeed, the fact that at Domesday Chesterfield was only reckoned amongst the six Berewics of the Manor of Newbold seems to indicate that the Borough could not have been nearly so extensive as the Manor, and yet, if we regard the ecclesiastical parish of Chesterfield we find that it includes not only the whole of the Manor of Newbold but other hamlets, as Walton, which at Domesday were reckoned separately; this point, however, seems to be common to both Borough and Manor, that both were of an ancient demesne of the Crown. It will be well to give the exact words of Domesday, that this may clearly appear.

The first entry is under "Terra Regis" Scarnedale Wapentake—Manor—"In Newbold with six berewics Witington, Brumington, Tapton, Chesterfield, Buttorp (Boythorpe), and Eckington, there are six carucates and one bovat, at geldable land six carucates, there

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the King has 16 villani, 2 Bordarii, and one serviens having 4 carucates. To this Manor belongs 8 acres of meadow, wood, and pasture, 3 leuc long, and 3 leuc broad. In the time of King Edward it was worth £6, now it is worth £10."

"In Walton Hundalf a free man has 2 carucates of land at geld, three carucates waste and wood pasture, 1 leuc long and 1 broad. In the time of King Edward xx shillings."

It is some proof of the extreme antiquity of these places as tenures of Royal demesne that £1—the ancient British tunc pound—was paid for each of them. They were probably ancient demesnes of the Crown before the advent of the Romans, and we have to resort to Welsh Records, which are similar to those of England in pre-Roman times, fully to comprehend the meaning of this payment.

It is a characteristic of the tenure of ancient demesne that there is almost a superstitious adherence to old forms; the Book of Domesday is now the only proof of what is ancient demesne. As is seen at pages 47 and 71 of the Records of Chesterfield, although the borough has for centuries become the caput of this Manor, yet the order in which the Crown mentions these places in the Letters Patent acknowledging them to be of ancient demesne, is the very order of Domesday which is preserved in the Charters of Ed. IV. and Queen Elizabeth; no doubt the reason is that these Letters Patent were granted through the Exchequer, and until recently the Book of Domesday was there preserved and resorted to whenever a writ of this kind was required. The probability is that the Book of Domesday was partly taken from earlier Domesdays than itself, and that probably they were copied one from another, dating back to a period antecedent to the occupation of the Romans. No doubt whatever exists that in the time of the Romans, if not previously, Chesterfield was the mart for the sale of the minerals of the district, and that at the time of the Conquest it was a Borough of great importance, but up to that time it had escaped the heavy amount of taxation which shortly after was inflicted upon it, and which we find was noticed by the Royal Commissioners in their report to William the Conqueror.

The whole of these Records leave out of estimation the fact that Chesterfield was a Borough, and refer to it only as a hamlet, paying the tunc pound of the British kings, proofs that the Borough and Manor were both of the same tenure, and at that time probably distinct. It is, however, clear that the component parts of the present Parish of Chesterfield cannot claim to be of the tenure of

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ancient demesne, simply because they are attached to Chesterfield, yet inasmuch as each part had itself similar rights, as the Book of Domesday shows, in fact, the whole of the parish may be denominated of ancient demesne of the Crown of England, as well as the Manor itself.

It has been doubted whether the Chesterfield of Domesday was the Chesterfield of to-day, and whether the latter was not excluded from Domesday. It seems incredible that it could have been really described as a hamlet of Newbold—a place never probably of any consequence. The history of the two places, their geographical position, and the undoubted fact that Chesterfield was the Roman city, the capital of this district, the great emporium of the metal merchants for centuries previously, whilst Newbold had nothing whatever to commend it—lying as it does in a comparatively subordinate position—has naturally raised doubts in the minds of those who have interested themselves upon this question, but a little reflection must satisfy the enquirer that Chesterfield, as described amongst the King's demesnes, was that place which had superiority over the district in the time of the Romans, and ever since the memory of man. Newbold, though an inferior place in many respects, may have been the centre of a large population outside the camp (castra), where possibly it was not permitted to erect houses for the poorer sort, or perhaps any dwellings, in the time of the pre-Roman Britons, and the Bailiff of the district may have resided there. At the time of the Domesday Survey the history of the place would have small attractions for him—doubtless a Norman—and for his own convenience he may have classified the district in the manner in which we find it in Domesday, but it is far more probable that it is so described because the older Domesdays described it in the same manner; and it is singularly corroborative of this idea that in after days, down even so late as the reign of Queen Elizabeth, when Newbold, if it ever had any importance in the district had lost it entirely, that the order in which they are mentioned (curiously omitting Newbold altogether) is precisely that of the order of Domesday—Wittinton, Brimington, Tapton, Chesterfield, Buttorp and Echintune; nay, the very spelling of the names, which by that time had considerably varied, is copied from Domesday, shewing that the writ is copied from the Book of Domesday itself. We learn the true meaning of these charters from Fitzherbert (p. 221 Natura Brevium). He

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states: "Tenants in ancient demesne, by the custom of the realm, ought to be quit of toll, &c., in every market, fair, town, or city throughout the realm, and upon that every one of them may sue to have letters patent under the King's seal to all the King's officers, and to mayors, bailiffs, &c.," (a fact which will be of especial significance when we come to consider the right of Nottingham to be classed as a borough of this tenure). This writ is granted when the citizens or burgesses of any city or borough have been quit of toll throughout the realm by grants of the King's progenitors, or by prescription, showing clearly that tenants of ancient demesne may have been denizens of cities as well as of urban places, contrary to the idea of the time of Lord Coke. Where charters are the source of the exemption they are set out in the writs. The letters granted to Chesterfield mention no grant, and therefore show that the right was by prescription. The separate certificates relating to Chesterfield, coming as they do at periods when and after changes had been made n the exact tenure of the Manor, are of the greatest value in proof of the preservation of the rights of the tenants of this Manor, which otherwise possibly might have been in dispute in consequence of the various Royal charters which appear to affect them, but it may be taken positively that notwithstanding the very curious and interesting series of Royal charters affecting the borough, it was never intended by the Crown, even if it had the power to do so, and consequently it may be affirmed that the Crown never did, disturb these ancient rights, and that they exist intact to this day.

The fact, therefore, that Chesterfield possesses not only the direct testimony of Domesday in its favour, but also successive charters confirming its right as a borough of ancient demesne of the Crown, some of which are actually co-temporary in date with the charters confirming the burgess rights, is of the highest importance, and it becomes necessary to point out the chief characteristics of these boroughs.

This is no easy task, for unfortunately all direct history is lost, and in the few records and cases we possess there is much confusion and error. The great Lord Chief Justice Hale, in his notes to Fitzherbert (Natura Brevium), frankly admitted that he had no knowledge of the subject. He wrote: "It does not appear by the writ what ancient demesne was." And the still more learned Lord Chief Justice Coke fell into strange errors and confusions. The best authority upon the subject seems to be Fitzherbert, who, in his

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Natura Brevium, has given us many of the actual forms of writs suitable to the cases of interference with the rights of tenants of this tenure which had been handed down to his time, but he has told us little of their true meaning, and this can now only be arrived at by a process of deduction and reasoning, the full scope of which can hardly find a place in this pamphlet.

It may be pointed out that many of the inconsistent and conflicting decisions on the law of ancient demesne can be reconciled and arranged by keeping in mind one idea, an idea which no writer has yet broached or even suggested, and which the author propounds with some diffidence, since Lord Coke himself had lost sight of it. It is that at the period of the Conquest there were two kinds of ancient demesne, one that which related to the direct tenants of the Crown, and the other that which governed the property of private individuals; and that there is ground for this distinction it is to be noted that nearly all the older authorities, in speaking of tenants of ancient demesne of the Crown of England, always use the latter words; therefore it may be inferred that there were tenants of this demesne who were not Crown tenants, otherwise the last words would not be so frequently repeated; but what proof is there of the existence of such a tenure in the cases of underlords or mesne tenants?

The answer to this question is that most probably the tenure of Borough English is similar to that of ancient demesne, not of the Crown of England, and that those Manors which at the time of Domesday were not yet held under the feudal system were of that tenure; in other words, that ancient demesne is the old English system as opposed to the Norman or feudal system, as it is often called, and this is probably the true solution of the difficulty. We find very curious and distinct traces of a double system in Nottingham, as well as in other places, at a much later period, when they had a French as well as an English Borough; that is, that the Norman lords, for some reason, possibly because of the protection of the Crown, failed to include within their Manor the ancient free tenants of the King's demesne. If this distinction is borne in mind, we shall be able at once to separate from the consideration of the law of this subject all those cases and decisions which refer to the destruction of the rights of the tenants of ancient demesnes by fine and otherwise, the rights of tenants of ancient demesne generally, that is, of private owners, can doubtless be destroyed and converted into Norman

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tenures, at will; but the rights of tenants of the demesne of the Crown of England are indestructible, and all that the Crown can itself do is to let them out to fee farm for the life of the reigning monarch. This would seem clear from the fact to be mentioned presently, that notwithstanding the grants to William Brewer of the fee farm of Chesterfield, he, one of the most powerful and grasping Barons of the age, the King's Justiciar and the Regent of Richard I., with all his power and influence, and unlimited judicial corruption, could only obtain a mere life tenancy, which even during the life of King John he was compelled to renew; and again, upon King John's death, he had to obtain fresh powers from his successor.

It may be asked, of what use is it that it should be proved that Chesterfield is a place of ancient demesne of the Crown? and if it is so proved, do any privileges worth possession now remain? Certainly it is of great value to prove it, and certainly, if so proved, all the privileges still remain; it matters not that they have been lost or encroached upon, for there is an old maxim of the law applicable, "Nullus tempus occurrit Regi," there is no statute of limitations against the Crown. The Crown can at any moment resume its rights which for any length of time have been lost or laid aside or unused, and as a corollary the tenants of the Crown can at any time reclaim their rights, because they are a privilege of the Crown itself, and any tenant of ancient demesne of the Crown can even now avail himself of these ancient privileges, he can refuse to serve on juries at Assizes or Sessions, or to pay County rates for certain purposes, as road making, bridge making, and so forth, which in old days were called the "Trinoda necessitas." Fitzherbert has preserved the ancient forms of writs for preserving and claiming these privileges, and modern legislation has not destroyed but only changed them; it is open at the present day for any Burgess to assert his individual claims, and, apparently, any Burgess on his own behalf or for the Corporation might apply for similar letters patent, to those granted by Edward IV. and Queen Elizabeth declaratory of their rights and privileges. Inasmuch as the book of Domesday has been in these days removed, as a curiosity, to the British Museum, the officers of the Exchequer might have a difficulty in complying with the demand, but still it might be claimed, and no doubt it could be enforced.

The Records of the ancient Borough of Chesterfield give practical illustration of some of the most venerable of our legal customs,

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and they shew that to understand the rights and liberties of the Borough properly it is necessary to go back to a period antecedent to the Norman Conquest, and to examine the law of real property existing under our Danish ancestors. The proof of this proposition is clear from the single fact that the tenure of the ancient Manor of Chesterfield is of ancient demesne, a most important feature which all historians, including Glover, seemed to have ignored, but being once established a great part of the liberties and privileges of the Borough can be learnt without even the necessity of obtaining independent proof of them, since necessarily they include all the incidents of this tenure, and in addition Chesterfield enjoyed many privileges granted by Charters. At the time of the Conquest—whether it was a peaceful conquest, that is, an acquirement of ancient inheritance, or a conquest in the modern acceptation of the word—an acquisition by the sword—Duke William of Normandy on assuming the Crown of England swore upon the Gospels, just as the great Canute upon entering upon the previous Danish Dynasty had sworn, that he would respect the ancient laws of the country, and standing first amongst those laws was the law of demesne, or as it was even then called, of ancient demesne. This distinction would seem to indicate that this law had a still older history than the Danish Dynasty of Canute, and that it was a part of the British law which had prevailed from the time of the Romans, and before even their occupation of the country, for they, too, respected the ancient Common Law of England, and therefore we lay the foundation for a belief that it was coeval with our Common Law itself, which is of a remote antiquity of unknown ages prior to the Roman invasion, but until our historians fairly consider this portion of our history prior to the Norman Conquest, wholly rejecting the fables of the scissors and paste school of so-called Saxon history (as if the nations of any country would designate themselves by a foreign name, and Saxon is the foreign name of Englishmen) we must be content to leave these interesting problems of antiquity, although they still affect the affairs of every-day life, in the semi-obscurity which now envelopes them.

It has been assumed by many authors that the tenure of ancient demesne was confined to those lands only which at the time of Domesday were in the King's hands, and were called in that great work "Terra Regis," and that those lands only which were so designated in that book were of this description; but it would seem that it must be taken generally that all the land of this Kingdom, including

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those called " Terra Regis " mentioned in Domesday, were originally of this tenure, except those (and it is admitted that Domesday records the greatest part of the lands of the Kingdom) which were held by the Norman tenure of feudality. Domesday was composed nearly 20 years after the Conquest of England, and William the Conqueror had doubtless by that time obtained the concurrence of most of the great landowners to hold their estates of himself, by the feudal system, and to parcel them out amongst their own followers, to be held by them under the same law.

It may then be asserted that the lands mentioned in Domesday, except those in the King's hands, were all held under the feudal system ; but this does not account for a great number of lands which were neither the King's nor of those lords who had attorned to the Conqueror as their superior lord ; in other words, Domesday is not a complete record of all the lands of the kingdom, but only of those of the new tenure, of those which were geldable, and those actually held by the King himself. The liberties and privileges of the tenure of ancient demesne have always been valued so highly that numerous trials have taken place, and the fortunate possessors of these rights, in the absence of better proof, have always been compelled to abide by the record of Domesday.

It is quite clear that ancient demesne cannot be created by grant (1 Salk, 57), for it depends upon ancient custom like a manor, and custom cannot be the subject of grant. The existence, therefore, of the fact that Chesterfield is a borough of ancient demesne at once places it in the category of boroughs by prescription, and this is asserted by every charter which King John made. In the charter printed at page 2 of the Records of Chesterfield, and where it is declared that the rights and liberties of all citizens of Chesterfield are to be held of William Brewer, the King expressly exempts all those who before that date enjoyed liberties in the said borough. Again, in his charters to Richard Brewer, page 21, and to William Brewer the younger, at page 25, the same words are repeated. What is this but an admission that a borough existed prior to any of his grants, for liberties and privileges of freemen could not exist without a borough? William Brewer the younger in his concord with the men of Chesterfield in the 11th of Henry III. agrees to respect their prescriptive rights, for it refers to the liberties which they held in common with the men of Nottingham, and Henry III., in his first Royal charter to the burgesses, printed at page 31, expressly refers to the liberties conceded by King John,

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amongst which were these very prescriptive rights, and these rights have been kept alive by every successive charter. Queen Elizabeth, in her charter, expressly refers to the ancient prescriptive rights of Chesterfield as distinguished from those granted by charters, and in addition we have those remarkable charters of Edward IV. and Queen Elizabeth certifying the fact of the ancient tenure of the place. Possibly if the authorities of the Record Office would index the patent and close rolls, one of the most valuable series we possess for municipal and domestic history, other charters of this kind might be discovered; but this fact is worth notice, that when a Royal charter was granted to Chesterfield by Edward IV. or Queen Elizabeth, at the same time a charter of their rights as tenants of ancient demesne was exacted, as if the inhabitants did not value very highly the new charter, and preferred to rest upon their ancient rights, or perhaps they feared that the new benefits might compromise the old.

It is laid down by Lord Coke, in his invaluable Institutes, that rights of this kind may be lost by either of several ways (4 Institution, 270):—

1. By fine in the King's Court.
2. If the land comes to the King.
3. Or if the lord enfeoffs another of the tenancy.

Lord Coke was no friend to manors of ancient demesne, and in every way endeavoured to curtail their privileges, but certainly he is in error in laying down these propositions so broadly. About his period all true knowledge of the rights and privileges of such manors seemed to have been lost, and apparently it has still to be recovered.

It may be doubted how far Lord Coke is accurate, at least so far as the ancient demesne of the Crown was concerned, in stating that the privilege may be lost by fine in the King's Court; for, first, it is tolerably clear that no tenant in tail of a manor of ancient demesne of the Crown of England can bar such entail, as he would have done had a fine been permitted; but if he endeavoured to pass a fine in the King's Court a writ of deceit lay, by which such fine might be avoided; moreover, if the estate so granted should by any means terminate, the ancient privilege of the tenants revived. There is an obvious confusion here. No fine of a tenant could possibly affect the rights of the Crown; a tenant of land in ancient demesne not of the Crown of England might indeed alter the tenure by fine, and these distinctions show that there are two kinds of ancient demesne,

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—one Royal, the other private. It would seem that in the hands of tenants the tenure is indestructible, and the reason of this is apparent, at least in the case of demesne of the Crown, for no subject can do any act in derogation of the rights of the Crown; nor would it seem (so clearly were they established) could the Crown itself infringe upon the tenants' privileges except by taxation. And the same principles apply if the land comes to the King's hands. Doubtless if manors escheat to the King he can grant them out under a different tenure, but this only applies to those manors which are not of the demesne of the Crown, for they cannot of course escheat, seeing that the King never dies, nor can do wrong, and has never parted with them, and the reigning King can only deal with these estates for the term of his own life. We shall see that in the case of Henry III. excusing William Brewer from payment of his rent. If the King grants them out to farm and does not at the same time keep alive the especial privileges of the tenants, whilst such term lasts they would seem to be lost, but this is doubtful, and if it is the case it is only so long as the farm lasts. Immediately it terminates by death, by forfeiture, or by lapse of time, the ancient rights revive, and they certainly would do so at the demise of the King granting them.

According to the authorities, so far as we can glean them, there were two kinds of tenants of ancient demesne—one who held their lands freely by Charter, and the other by copy of Court rolls; still further, Lord Coke divides them into three classes. The existence of a vast number of charters relating to Chesterfield properties, in the depositories of the Duke of Devonshire, at Hardwick Hall; and of Mr. Foljambe, at Osberton, the first as Lord of the Manor of Chesterfield, and the other as Lord of Walton, and the absence of any Court Rolls showing the tenure by that mode, show clearly that the Chesterfield tenants were of the first and highest order tenants by Charter. (Britton, c. 66.) Whilst the system pursued at Nottingham, from the earliest time, of enrolling all grants of lands by deed or will, in the Borough Court, seems to indicate that they were of the second kind, namely, those who held by Court Roll. Amongst the privileges of tenants by ancient demesne, which was highly prized in early days, were that the tenants could not be impleaded out of their Manor Court, for if they were so impleaded they could abate the writ by pleading their tenure; this right would enable them, even in these days, to be independent of the modern County Court system. They were free of Toll for all things bought and sold concerning

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their service and husbandry, and they might not be empanneled on any jury, and if they were returned upon juries they might have a writ "de non ponendis in Assizis," and attachment against the Sheriff (F. N. B. c. 14). And if they were disturbed by the taking of tolls they might have writs of "monstraverint" to be discharged. They were free as to their persons, for no one should presume to interfere with the liberty of the King's servants.

Now all these customs or rights are clearly and distinctly recognized in Wake's Charter, printed at page 33 of the Records of Chesterfield, and many of them in the Charters of Edward IV. and Queen Elizabeth, and it is most clear that none of them were destroyed by any of the King's charters whatever; indeed they could not be destroyed, for on the termination of the King's death his lease at fee farm died, and the former state of things revived, and with it all the ancient privileges and customs. Lands in ancient demesne are extendable on a Statute Merchant, Staple or Elegit 4, Just. 270.

If in ancient demesne a writ of right close be brought and prosecuted in the nature of a formedon, a fine levied there by the custom was a bar; and if this judgment was reversed in Common Bench, that Court should only judge that the plaintiff be restored to his action in the Court of ancient demesne, unless there is some other cause which took away the jurisdiction. Jenk cent 87, Dyer 373, and see 4, Just. 270.

One of the great characteristics of a Manor of ancient demesne was that it could not be granted away from the Crown, but was let by the Crown at fee farm. The charters of Henry II. and King John (for this purpose it is immaterial whichever king granted the first charter, for it is only a confirmation, and no doubt similar to Henry II.'s charter) show that originally Chesterfield was let to fee farm, and it is one of the incidents of fee farm rents that they are indestructible, no tenant-in-tail could bar the remainder. 22 and 23 Car., 2 c. 24. By the statute of 22 and 23 Car. 2 c. 60 the King was enabled by letters patent to grant fee farm rents due in right of the Crown to trustees for sale, but there is nothing to show that this was ever done with respect to Chesterfield; on the contrary, it is clear that the rents remained in the hands of the Duke of Devonshire as Lord of the Manor until he sold them to the Market Company.

But if Lord Coke and Lord Hale seem to have been greatly at fault with respect to the law of ancient demesne, a lawyer of the present day may well excuse himself for ignorance, for with one

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single exception there is no report in modern times of any decision upon the subject; that is, upon any principle involved. There are several cases reported with respect to the mode in which the privilege is to be pleaded, but none giving us a measure of the privilege itself. The one solitary exception known is a remarkable one, and as it occurred some four-and-twenty years ago, and but little is known of it, it may be worth while to give a full account of it. The case was that of the Queen and the inhabitants of Aylesford, and it arose upon an appeal from the Sessions of the county of Kent upon a case granted by the court, and it came on for decision before a strong court. The Lord Chief Justice Cockburn presided, and he was aided by Justices Wightman, Crompton, and Hugh Hill.

The learned reporters, Ellis and Ellis (vol. 2 of their reports, p. 538), unused to such profound disquisitions, unless indeed the judges led them into error, have made a ludicrous hash of it in their foot-note. They give as the result of the decision that "The exemption of tenants in ancient demesne from Parliamentary taxes and talliages is limited to taxes granted by Parliament to the Crown, and does not extend to local taxation levied under the authority of an Act of Parliament upon and for the benefit of particular portions of the community. Tenants in ancient demesne are not therefore as such exempt from payment of county rates."

Now, the converse of this proposition is the fact. The wildest advocate for exemption never ventured to assert that tenants in ancient demesne, even of the Crown of England, could claim exemption from Crown taxes. In all charters allowing the privilege to the tenants of Chesterfield the dues payable to the Crown are expressly excepted, as will be found by reference to the charters of the Borough of Chesterfield. The principle of the exemption is that these tenants being the especial tenants of the Crown, and paying by services direct for their privileges to the Crown, are not like others who benefit for themselves by the government of the county, and who therefore should contribute to its maintenance. They are entitled to exemption from all county rates, for repairs of bridges, roads, and so forth, because they use them in the exercise of royal privileges and for the King's benefit. If, therefore, the existence of the law of ancient demesne at the present day is admitted, as it is unquestionably by this decision, then very clearly are tenants in ancient demesne exempt from payment of county rates for any of these especial county purposes, unless they are expressly named in the Acts of Parliament.

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The history of the manor of Aylesford is curious and very interesting. It is situated in the hundred of Larkfield, lying partly within the parish of Aylesford and partly in adjoining parishes. The parish is intersected by the Medway, and that portion of the parish which is not a portion of the manor of Aylesford, is included in other manors. The jurisdiction of the manor extends over the borough of Rugmore Hill, which lies in, and comprises portions of, the parishes of Yalding, Hunton, Horsmonden, and Brenchley. The manor of Aylesford was clearly part of the ancient demesne of the Crown of England, as appears by Domesday, where it is assessed as Terra Regis, and worth £28. Henry III. granted it in capite to Sir Richard Grey. It was forfeited by his son, John de Grey, and on inquisition found to be of ancient demesne. It was afterwards regranted by the Crown to the same John Grey, and it continued for several generations in his family, until ultimately Sir Thomas Wyatt was siezed of it in the 34th year of Henry VIII. His son, Sir Thomas Wyatt, forfeited it, and it was granted by the Crown to Sir Robert Southwell and Margaret, his wife, to be held in capite by the service of the fortieth part of one knight's fee, since which period it has never reverted to the Crown. According to Lord Coke either of these forfeitures and regrants would have destroyed the character of ancient demesne, and changed it into Frank fee. This point does not, however, appear to have been insisted upon, or even hinted at, and it may therefore be taken that it was considered untenable. The manor of Preston, Tottenton, and Eccles, or Ayles, are also partly in the parish of Aylesford. Tottington is enumerated in Domesday among the possessions of Odo, Bishop of Bayeaux, and seems to have been subsequently granted by King William, to be held by the tenure of knight service, under which it has always been held by a subject. Eccles also appears in Domesday as the property of Odo, and seems to have a similar fate to that of Tottington. The inhabitants of the whole parish of Aylesford, namely, those of the manor of Aylesford, as well as of the manor of Tottington and Eccles, have from time immemorial enjoyed some at least of the immunities incident to the tenure of ancient demesne—strong presumptive evidence that this tenure was anciently that of the whole kingdom. There is no record of any of the inhabitants of the whole parish having ever been summoned to serve, nor of their having served, upon any jury at the Assizes or Quarter Sessions for the county. They have never paid or been called upon to pay county rates, except as hereinafter mentioned, nor have soldiers ever been billeted upon them, but the

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owners of all lands in the parish have paid land tax and all other parliamentary taxes.

A Court Baron is held for the Manor of Aylesford before the Steward and homage, at which presentments of deaths and alterations, and other matters relating to the Manor, are presented and entered upon the Rolls. In this Court fines were levied and recoveries suffered. The last fine was levied in 1831. It should be noted that the Fines and Recoveries Act does not extend to lands of ancient demesne of the Crown but only to lands of Sub-Lords, since the Crown is not mentioned in this act. A Court leet and view of Frankpledge, as held before the Steward and Inquisition, and at this Court the following officers were appointed constables for Aylesford and the Borough of Rugmore Hill, borsholders for Aylesford and Rugmore Hill, street drivers of and within the parish of Aylesford within the said Manor, and of and within the Borough of Rugmore Hill within the said Manor, ale conners and weighers of weights and measures within the said Manor.

The title of the Court entered on the Rolls is that of the Manor of Aylesford of the ancient demesne of the Crown of England, the view of Frankpledge of Charles Miller, Esq., the Lord of the said Manor, and Inquisition of our Sovereign Lord the King, presenting certain persons to be officers for Aylesford for the year ensuing.

The Court Baron and Court Leet were usually held annually.

The tenements of the Manor passed by the usual mode of conveyance of freehold estates, but at the Manor Courts the tenants were admitted to hold not "according to the will of the Lord," but according to the custom of the Manor.

Amongst the entries on the Rolls were "plaints," essoins of tenants, homage, alienation of messuages stating that the messuage was held by fealty suit of court from three weeks to three weeks, and rendering half-a-year's rent for a relief upon every death or alienation, and by the yearly rent of 9d.

The Jurist report, which is far more valuable than the other, gives the details, and adds a particular entry of great value, a presentment upon the death of H. C., who held of the Manor, whereupon a relief is due to the Lord, and upon his death one moiety of the premises descended and came to M. C., his daughter, and her heirs, and the other moiety thereof came and descended to M. C., his widow, during her widowhood, and after her death or marriage to the said M. C., the daughter, and her heirs, and the widow and

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daughter paid the relief and arrears of quit rent and were admitted tenants, but their fealty was respited.

The mode in which the parish had been dealt with, with respect to county rate, was peculiar; after the passing of the first County Rate Acts, 1739 (12 George II. c. 29), the parish was rated to the county rate. The Sessions Records show that the parish and borough of Rugmore Hill were so rated in the years 1743-4-5-6, and credit is given in the county treasurer's accounts for the whole amount of the rate. The parish was rated in like manner from 1747 to 1763, but the rates for those years were not paid. At the General Court of Quarter Sessions, holden the 12th April, 1763, the Constables of Aylesford and Rugmore Hill were summoned to account for those rates not having been paid; they appeared by Counsel, and denied their liability on the ground that the whole parish was ancient demense of the Crown of England. An Order of Sessions was made by consent, by which, after reciting that the inhabitants had appeared and alleged that all the lands so rated were of ancient demesne of the Crown, and as such are and always have been exempted and discharged from the payment of all county stock whatsoever, it was admitted that the said inhabitants had for a great many years before the passing of the said Act been rated and assessed and paid and contributed to such assessments for repair of two bridges lying within the said liberty of ancient demesne, called Aylesford Bridge and Garford Bridge, it was declared that the said town and parish of Aylesford and the said borough of Rugmore Hill, as part of the ancient demesne of the Crown of England, always have been exempt and discharged from the payment of all county stock rates or assessments whatsoever other than and except occasional rates or assessments made for the repairs of county bridges, to which assessments and as others it does appear the said town and parish of Aylesford and the said borough of Rugmore Hill have from time immemorial been assessed, and that such assessments in consideration and on the account aforesaid have been paid by the inhabitants of the said respective places for the time being, before the making of the before-mentioned Act of 12 Geo. II., c. 29, and for settling and apportioning the part or proportion in which the said town and parish of Aylesford and the said borough of Rugmore Hill ought to pay the county rates or assessments hereafter to be made pursuant to the before-mentioned Act. It was ordered that the inhabitants of the said town and parish of Aylesford and the

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said borough of Rugmore hill should thenceforth be rated and pay after the rate of one-fourth part of the several respective sums charged and assessed upon other places and parishes within the said county, but in regard that the county rates had of late been much increased by the embodiment of the Militia, it was further advised that whenever the county Militia should thereafter be embodied, the inhabitants of the said town and parish of Aylesford and the said borough of Rugmore Hill should pay at and after the rate of one-eighth part only of the several and respective sums charged or assessed on other parishes and places in the said county. And it was further ordered that the said inhabitants of the said town, parish and borough, in consideration of their condescending and submitting to the aforesaid proportion and allotment, should be exonerated, freed, and discharged of and from all arrears of county rates and assessments theretofore made, rated, and assessed from the making of the above order until that date.

This compromise had been respected, but now it was attempted to go beyond it and charge the inhabitants with County rate and Police rate. The questions involved the liability both of the Parish and of the Manor. Montague Smith and Deedes, for the respondents (the County) argued that under the statute of 15 and 16 Vic., c. 81, s. 2, all lands liable to be rated for the poor rate were rateable for the county rate, unless especially exempted by the Act. They admitted that the manor of Aylesford was of ancient demesne, but denied that the lands within it were held separately in ancient demesne; and they submitted that land might be of ancient demesne, although the manor of which it was held was not. Assuming, however, that the lands of Aylesford parish were of ancient demesne (of which there could be no doubt), they argued that notwithstanding they were liable to be rated, citing 4 Inst. 270 Comyn Dig. title Ancient Demesne K., and Cox *v.* Barnsley, Hob. 48, where it is stated that if lands in ancient demesne are not named they shall be subject to a statute which charges the possession when the land itself is not in demand in the King's Court. In Fitzherbert, 14 E., the privilege is stated to be and to be quit of taxes and talliages granted by Parliament, if not that the King lay a tax upon ancient demesne as he may for some great cause whenever it seemeth good unto him: this unfortunate allusion to arbitrary powers was too much for the Bench, and Smith was "stopped by the Court."

Pickering (and Denman with him) then for the appellants (the parish) attempted to draw back the Court into the right lines. The

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order of Sessions of 1763, he argued, was a judgment in rem that all the lands in the parish of Aylesford were lands in ancient demesne, an astounding proposition, since it was equivalent to stating that a customary right could be granted by fine, and the Court requested the learned Council to confine himself to the point whether assuming that the tenure was of ancient demesne the claim of exemption from county rates could be sustained.

Pickering then contended that one of the privileges of tenants in ancient demesne was that they were free of taxes and talliages by Parliament, unless they be specially named, citing 4 Institute, 269. This indeed is the chief point of the case, and this is clear and explicit law.

Counsel then argued that in the land tax Acts, lands in ancient demesne are expressly named, 4 Wm. & M., c. 1, s. 4, 36 George, 3 c., and the House tax Act, 20 George II., c. 13, s. 2, and then cited 1 Com. Dig. by Hammond, 609, Ancient Demesne, F. 2. Counsel then argued that the phrase "Taxes granted by Parliament" excluded taxes on the inhabitants in a county as well as taxes on all the subjects of the realm.

Crompton, J., exclaimed, "But by that argument there could be no lighting rate, no water rate, and no poor rate."

Pickering weakly retorted (instead of boldly meeting the argument) "there was no poor rate in extra-parochial places," when he was reminded by Cockburn, C. J., that such places had no machinery to make and collect such a rate; but Hill, J. set the Court right by reminding them of the remedy under Sec. 3 of the 12 Geo.II., c. 29.

Pickering then remarked that they chose to pay the poor rate for their own convenience, and then went once more to the point by declaring that exemption from county rate is not more unreasonable than some express exceptions, e.g., from the Statute duty for the repairs of highways, which was one of the Trinoda necesitas, but, in fact, he was treading upon fatal ground when he referred to the argument of convenience and unreasonableness, and on this rock he split, for if it could be decided on this point the Court must decree against him. No doubt it is an unreasonable, unfair, unjust exemption. So are many other exemptions, and nearly all monopolies are unjust, but they are legal, and the argument of convenience cannot be brought to bear upon them.

The Court finally disposed of his argument by admitting a fresh line which he entered upon, that it was of no importance to the issue

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that from time to time these rates had been paid, and this admission is of the utmost importance to those who desire to establish their privileges. Cockburn, Chief Justice, then delivered the judgment of the Court, and if it is to be regarded as inconclusive it must be admitted that it was somewhat hastily arrived at, without full consideration, and without fully hearing either side of the argument. The Chief Justice based his decision upon the inconvenience, injustice and mischievness, whatever that means, of maintaining the exemption, and he thought that the obvious answer to the fact that the Acts cited had expressly named the tenants of these manors was that the taxes referred to in those Acts were merely a substitute for the old form of subsidies and talliages, which were taxes on land, and therefore he assumed that the tenants of ancient demesne being expressly exempt from payment of such taxes, they would but for this express exemption have been exempt from them as a substitute, but the weakness of the chain of reasoning is that this assumption is incorrect. The tenants in ancient demesne were not exempt from payment of taxes demanded by the King, whether as subsidies or talliages, but only for those demanded by the county; hence the logical conclusion of the Lord Chief Justice is, though he arrived at a directly contrary decision, that they are not liable to pay county taxes which are substituted for talliages, from payment of which they were originally exempt, unless they are expressly named in the Acts of Parliament.

Crompton still more clearly showed the unsoundness of his Chief's reasoning, by declaring that in his opinion the county rate was not a parliamentary tax or talliage granted to the Crown, and then he stated, erroneously, that the exemption of tenants on ancient demesne did not extend to taxes not of a parliamentary character, and he argued that it could not have been the intention that the exemption should apply to taxation under Acts of Parliament for the benefit of a particular part of the community, a most delicious piece of inconsequence, since Parliament itself was not born for centuries after the law of ancient demesne was firmly established, and its Acts therefore could hardly have been in the mind of the framers of the law of ancient demesne. Hugh Hill, J., placed on record the grave errors into which the Court had fallen still more clearly, by declaring that local taxation for the local benefit of a district or county under the entire management of the neighbourbood thereof is not a tax or talliage granted by Parliament to the Crown; if this is so, then the decision of the Court was wrong, and there can be no question that

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it should have been declared that a county rate was not one of those tenures to which tenants in ancient demesme could be called upon to contribute. If it had been a tax or talliage granted by Parliament to the Crown they could have had no right of exemption, for the liability to pay such taxes was one of the incidents of their tenure, and is expressly kept alive by all the Charters granted to Chesterfield; but whatever may have been the case with respect to Aylesford, it does not appear that it had ever obtained any records of the Exchequer similar to the Charters of Edward IV. and Elizabeth, which would have aided the Court in its decision, yet in the case of Chesterfield they are clear and explicit; whatever has been the practice, whether Chesterfield has or has not paid county rates for all rates levied for the repair of roads, bridges, or other things mentioned in the Charter, Chesterfield is free, and so are all places which can show so clearly as Chesterfield can, that they are still tenants of ancient demesne of the Crown; on the same principle also the men of Chesterfield are exempt from serving on juries at the County Sessions or Assizes.

The valuable charter granted to William Brewer the elder, printed at page 1, is of immense value in proof of the preservation of the rights of the men and tenants of Chesterfield. The King expressly excepts from those who were to hold under his grantee Wm. Brewer, all those who before that time had enjoyed these privileges. This is again clear from the charter to Richard, son of William Brewer, at page 21, and both these charters were merely grants to hold the borough of Chesterfield at fee farm. William Brewer, the younger, obtained a larger grant of it, according to the charter of 17 John, printed at page 21, the sole authority for which seems to rest upon Dr. Pegge's transcript, now in the Heralds' College; but that grant, although it goes beyond the previous grants of the same King, which were merely in fee farm, still preserves the ancient rights of the men of Chesterfield, and it was only a grant in fee tail, which could not be barred, and upon its termination the ancient rights, even if it interfered with them, would revive.

The grant of the manor to fee farm is a curious feature, and shows that the system was far more extensive than Lord Coke supposed.

In the Red Book of the Exchequer it is stated, In primitivo regni statu post conquisitionem regibus de fundis suis non auri et argenti posidera sed sola victualia solvebunter ex cuibus in usus quotidianus Domus Regiæ necessaria adminstrabuntur.

Hence Lord Coke assumes that this tenure was confined simply

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to those Manors which so contributed to the supply of the Royal table, but he has overlooked the fact that the same would at the period indicated be said of all other Manors, as well as those held by the Crown. There was no money in currency, so that payment in kind was a necessity and not an exception; besides, the lords of all manors let out these territories on the same terms. It is, therefore, evidently a mistake to suppose that it was confined only to those Manors which supplied the Royal tables, and a glance at Domesday will shew the absurdity of the idea, for these Manors are most numerous, spread over the whole Kingdom, and if this was the only service required of them half and much more must have held them rent free, but as a fact many of them paid a rent in money at Domesday, and hence it is that the King granted them out in fee farm, the tenants probably still paid the mesne tenant in kind, but he paid the Lord in money, and we see this exactly proved by their Charters. William Brewer and his sons paid the King £69 yearly for Chesterfield, but the tenants and men of the place preserved their liberties, one of which was, doubtless, the right of payment in kind; in the case of Chesterfield, however, William Brewer himself seemed to have re-let the Manor at a money rent, for amongst the Rotuli Curiæ Regis of 13 and 14 Henry III., No. 33, there is a suit between Robert de Lexington, a Baron of the Exchequer; and William Brewer, in which Peter de Brimington, probably one of the Brito's, of Walton, admitted that he paid William Brewer £20 per annum for Brimington, of which one Robert paid £10. But there is another circumstance which Lord Coke has overlooked which shows that his theory is inaccurate; dwelling on his ancient text that the tenants paid in victuals, he asserts broadly that this sort of tenure was confined to urban places, and did not extend to the inhabitants of Boroughs. It is a curious fact that London is said not to have been of ancient demesne (see certificate of 7 Henry VI., No. 32); but amongst the places so held may be reckoned many of the chief towns of the Kingdom—Lincoln (it is said), Nottingham, Gloucester, Worcester, and many other places of great commercial interest at the time of the Conquest, and much earlier.

In support of this view Lord Coke lays it down: If a tenant in ancient demesne be a common merchant for buying or selling of wares or merchandises that rise not upon the manurance or husbandry of their lands, he shall not have the privileges for them, because they are out of the reason of the privileges of ancient demesne, and the tenant in ancient demesne ought rather to be a husbandman than a merchant

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by his tenure, and so are the books to be intended, and in support of this proposition he cites the case of the Abbot of Locus, St. Edward, Rot. Parl. A° 18, Ed. I., fol. 2, between the Abbott and the Bailiffs of Southampton. It is recorded that Henry III. granted to the Abbot of St. Edward and his successors that they and their successors should be free from toll. And it was resolved that the Abbot and his successors should have the privilege by force of this general in this manner, that in buying and selling for themselves in necessaries, and in victuals, cloths, and so forth, to their own proper use, therefore excluding their right as merchants. But Lord Coke forgot that this case was not in point, since the right claimed arose from a grant, and not from the tenure of ancient demesne, which cannot arise upon a grant. Besides this he is in error, for the very terms of these charters show that the rights of the tenants, which were expressly preserved, were those applicable to cities and to trade, and not only to husbandry. In the remarkable concord between William Brewer, the younger, and the men of Chesterfield (page 28), it is expressly allowed that no one should be made reeve (prepositus); the same name by which in cotemporary charters the chief magistrate of London, and of Nottingham, and other cities were designated, without his assent, and one of the chief points in variance between the parties seem to have been the rents of stalls; and the chief privileges of the men of Nottingham, which were extended to Chesterfield, according to the charter of King Henry II. (page 7), are privileges which it is recited were held by them in the reign of Henry I. (the Conqueror's son), and therefore doubtless similar to those held at the time of Domesday, and these were the rights of a merchant guild with a right to choose a reeve (prepositus), all facts showing that merchants' rights were an important, and indeed the most important, of the privileges of the tenants of ancient demesne.

Domesday is unfortunately silent as to the state of Chesterfield at this period of its composition, and were it not for the fact that the earliest charters which have been discovered relating to Chesterfield in almost every instance point to the similarity of their customs with those of Nottingham and Derby, which fortunately are accessible, we should be in ignorance concerning them. In order, therefore, to learn precisely what those customs are, we must resort to the histories of those towns, and fortunately Domesday has preserved a full account of both of them; they are even in Domesday mixed together,

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there being an indication in the Derbyshire Domesday to look for the town of Derby in the first leaf of Nottingham; the reason of this probably being that both counties were under the same government.

In Domesday for Nottinghamshire is found the following:—In the Borough of Nottingham, in the time of Edward the Confessor, were 173 burgesses and 19 villeins. Adjacent to the borough were 6 carucates of land paying to the King's geld, and one mead and smallwood 6 quarentens long and 5 broad. This land was divided between 38 burgesses, and paid 75 shillings 7 pence, and two moneyers paying 40s.

Within the borough, Tosti, the Earl, had one carucate of land, from the soc of which the King had two pennies, and the Earl the third (*i.e.*, the Earl's penny).

Hugh Fitz Baldric, the Sheriff, found 136 men dwelling there, now there are 16 less, yet Hugh himself appointed in the land of the Earl, in the new borough, 13 houses which before were not, putting them in the census of the old borough.

In Nottingham was there one church, in the demesne of the King, in which lay 3 mansions of the borough and 5 bovates of land of the six before-mentioned carucates, with sac and soc, and to the same church pertaining 5½ acres of land of which the King had sac and soc. The burgesses have 6 carucates of land to plow, and 20 borders, and 14 carucates. In the waters of the Trent they were accustomed to fish, and now they complained that the fishing was prohibited.

In the time of Edward the King, Nottingham paid £18. Now they pay £30 and £10 for the Mints; Roger de Busle had in Nottingham three mansions, in which were located eleven houses, paying 4s. 7d.; William Peverel had forty-eight houses of merchants, paying 36s., and twelve houses of knights and eight bordars; Ralf de Buron (Byron) had thirteen houses of knights. In one of these dwelt one merchant; Gilbertus had four houses; Ralf fitz Hubert had eleven houses. In them dwelt 111 merchants; Goisfred Ascelin had twenty-one houses; Accard, the presbiter, had two houses; in the croft of the presbetery were sixty-five houses, and in these the King had sac and soc. The church, with all its appurtenances, was of the value of 100 shillings annually; in the Foss (Fossato) of the borough were seventeen houses; Richard Fresle had four houses, and others six houses; to William Peverel the King granted ten acres of land for making an orchard.

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In Snotingham (Sneinton) Lord King Edward had one carucate of land, with the geld land two carucates there. The King now has eleven villeins, having four carucates and twelve acres of meadow, in demesne nothing. In the time of King Edward it was worth £3, now the same.

In Snotingham the river Trent and the fosse and the highway towards York are kept, so that if anyone should hinder the passage of ships, and if any one should plow up or dig a ditch on the Royal way within two pticas therepf, he should be fined for either act £8.

In the Borough of Derby in the time of Edward the Confessor were dwelling 243 burgesses, and to the same Borough were attached 12 carucates of geldable land, of which 8 carucates could be plowed. This land was divided between 16 burgesses, who had 12 carucates, the King had two parts and the Earl the 3rd of the census (de censu), and tolls and forfeitures (forisfactura), and of all customs.

In the same Borough the King had in his demesne one church with 7 clerics, who held two carucates of land free . . . . in cestre. was another church, likewise of the King, in which 6 clerics held 9 bovates of land, in Cornun and Detton, likewise free. In the same town were 14 mills.

Now there are there 100 burgesses, and 40 other less (minores), 103 mansions are waste which formerly paid to the census.

There are now 10 mills and 16 acres of meadow smallwood, 3 querents long and 2 broad. In the time of King Edward it was rated altogether at £24, now with the mills and the vill of Ludecere (Litchurch) pays £30. In Ludecere has the King 2 car. of geld. land, 3 car. there in socage, had 9 villeins having 11 car. and 12 acres of meadow.

In Derby, the Abbot of Bertone has 1 mill and 1 mas of land, with sac and soc, and 2 houses of which the King has the soc, and 12 acres of meadow; Goisfred Ascelin has one church which was Toche; Ralf fitz Hubert, one church which was Leuric's, with one car. of land; Norman de Lincoln, one church which was Brun's; Edric has there one church which was his father Coln's; Hugo, the Earl, has 2 masures and 1 fishery, with sac and soc; Henry de Ferrariis, 3 masures, with sac and soc also; Osmer Presbiter has 1 bov of land, with sac and soc; Godwyn Presbiter 1 bov of land, of the same.

At the feast of St. Martin the burgesses pay to the King 12 Trabes of corn, of which the Abbot of Berton has 40 sheaves.

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Also, in the same borough were 8 masures, with sac and soc; these were Algar's, now they are the King's. Two (numi) of the King, and the third of the Earl who governs in Derbyshire, of the Appletree Wapentake are in the hands and census of the Viscount, by the oath of the two shires.

Of Scori, the ancestor of Walter de Arncourt, they say that without permission of any, because he could make for himself a church in his own soc and land, and send his tithe where he would.

In Nottingham and Derbyshire the peace of the King, given by hand (manu), or under seal (sigillo), if it was broken it was accounted for by eighteen hundreds, each of which hundreds paid £8 of this reckoning to the King, two parts; to the Earl three; that is twelve of the hundreds paid to the King, and six to the Earl.

If any, according to law, were exiled for anything, no one but the King could restore the peace to him.

Those having more than six manors to give land in relief only to the King, £8.

If any had six only, or less, the Sheriff had the relief—three marks of silver of whoever dwelt in the borough or without it.

If any having sac or soc forfeited their land between the King and the Earl was divided, half of the land and the money, and his lawful wife and legitimate heirs, if there were any, had the other half.

These are noted who had soc and sac, and Thol and Theam and customs of the King, two pennies.

Archbishop of York for his manor, Countess Godiva for Newark Wapentac, Vissenise for his lands, Abbot de Burg for Colingham, Abbot of Bertune, Hugo Earl for Marcheton, Epis of Chester, Toschi, Suen fil Suane; Siward Barn, Azor fil Saleve, Ulfric, Elsi, Illinge Lewen fil Aluin, Alveva Comtessa, Goda Comtessa, Elsi fil Caschim, for Werksop; Henry de Ferriers for Ednosetune and Dubrige and Breilsfordham, Walter de Aincourt for Granebi and Mortune and Pinnesley. Of all of these no one could have the third penny of the Earl unless it was conceded to him, and this so long as he lived, except the Archbishop and Vissenise, and the Countess Godiva upon the soc which lies at Clifton, should the Earl have the third part of all customs and work (opus).

Here we have a remarkable record of these towns, and the town of Nottingham has been so fortunate as to possess an enlightened executive in these days, and we are able to glean from the pages of the "Records of Nottingham," now in course of publication, much

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that is of value touching the rights and liberties of the town of Chesterfield. It is to be hoped that the town of Derby may follow the excellent example of their sister towns, and produce a similar work. In all probability a history of the Records of Derby would throw much greater light upon the rights and privileges of all three places.

The charters printed from the Nottingham records, which are to be found at pages 6 to 17 of "The Records of Chesterfield," and that of the Borough of Derby, which was found in the rolls of ancient charters at the Record Office, and which are evidently coeval with the Chesterfield charters, clearly exhibit the main lines of the rights of the citizens at that period. It is to be regretted that the records of Nottingham have been written rather from an historical and archæological standpoint than with a view of clearly exhibiting the legal rights of its citizens. History and antiquities are delightful studies in their way, and sometimes of great practical value, and the author has devoted too much of his life to their study to care to depreciate them, and perhaps it is difficult to separate them from the more utilitarian objects of the work. Perhaps the author has himself erred in this respect. In the Nottingham records a great confusion has arisen from the compiler having, so to speak, left the beaten paths to invent new terms; especially is he confusing in his use of the terms French borough and English borough, the meaning of which, even in his point of view, he leaves in doubt. To the author it seems that this is nothing more than the distinction between the old town and the new town. As the record of Domesday shows, within the foss of Nottingham were even then many holdings, and no doubt the old town of Nottingham, which was limited in its circumference within the walls, having preserved the ancient English law, or law of borough English, as it is called, a law which the author ventures to suggest is identical with that of ancient demesne, may in a certain sense be termed an English borough; and every borough and manor which fell under Norman rule be termed French boroughs. A still greater difficulty exists in the arrangement of the Nottingham charters, or rather in their utter want of arrangement and classification, except that they have the advantage of being printed according to date, they might just as well have been taken indiscriminately, as they were found; as it is, a very careful search must be made in order to separate from the mass the really valuable

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documents which bear upon the liberties and customs of the borough. Interspersed amongst its pages are to be found a very remarkable series of Royal charters affecting these liberties, from which may be deduced an approximate idea of what they were. We do not find any record of any certificate of the Crown under the great seal from the Book of Domesday certifying into the Chancery that Nottingham was a borough of the ancient demesne of the Crown of England, as we have been so fortunate to find in the case of Chesterfield, but in a very curious paper in English, evidently of the date of Edward IV. or Richard III., purporting to be instructions to counsel of the town, and which directly tallies in several of its main particulars, with a dated document of the 15th November, without the year, but which it is said can be dated approximately to the year 1484 by certain entries in the Chamberlain's accounts. In this document a reference is made to the fact of the borough being of the tenure of ancient demesne, but hardly in a confident manner. The person to whom it was written was probably Thomas Hunt, the Borough Attorney. He is directed to commune with the burgesses of Worcester and Gloucester, "for the matter betwixt us and them for the tolls," &c.; and there is added: "And if nede be to show to them that we be of ancient demesne," &c. This may be the effect of excessive caution, but it rather looks as if at that date some doubt existed upon the subject, and as if it was dangerous to produce the records; and certainly the Borough of Nottingham is not entered in Domesday under the head of Terra Regis, which Lord Coke lays it down is an indispensible requisite, but it may fairly be contended that it was of that character, because it clearly was not under feudal dominion at that period. However, in a very remarkable document, dated the 20th of April, 1485, purporting to be an agreement with the city of Lincoln regarding the taking of tolls, to which a fragment of the seal of the city of Lincoln is said to be still attached, there is an important recital that the evidences of both parties (Nottingham town, and Lincoln city) "had been examined, seen, and understood," and "they had found by divers certificates certified into the Chancery of the kings of England from the Book of Domesday, and sealed under the great seal of the Kings aforesaid, that both the aforesaid city of Lincoln and the aforesaid town of Nottingham were of the ancient demesne of the Crown of England, and ought to be quit of the payment of *toll*, *lastage*, *murage*, terrage, *picage*, pontage, *panage* (wrongly written pavage, as if a city could

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claim such an exemption for itself), *stallage*, chiminage, and *passage* through the whole realm of England aforesaid, according to the laws and custom thereof, as fully appeared in the certificate aforesaid, and in the records enrolled of the aforesaid city and town."

It is singular, to say the least, that no record whatever of any of these certificates is now remaining. A search amongst the patent rolls may produce them, if indeed they ever had an existence. It may have been that these two neighbouring towns were quite willing, for their mutual advantage, to act as if it was the actual fact that they possessed such rights; and very curiously Nottingham would seem to possess nearly all of these liberties, but by charter and not by virtue of being a borough of ancient demesne. Several successive Royal charters, which have found a place in this selection, guarantee these rights, but these charters are not even referred to in this document.

As will be seen by reference to the charters of Nottingham (printed at pages 6 to 17) of Kings Henry II. and John, that Nottingham possessed the right of Thelonia with Tol and Theam from Thrumpton to Newark, and of all things crossing the Trent, as fully as in the Borough of Nottingham; and, moreover, that the Borough had possessed this right as early as the reign of King Henry I. If this is a true recital of the liberty which existed so shortly after the Conquest, it differed in this material particular from the same right which the tenants of ancient demesne possessed—a fatal difference, it would seem, it was a limited or circumscribed right within a particular area, whilst the tenant of ancient demesne of the Crown of England possessed this liberty throughout the whole land, and this liberty King John by his charter affects to give to them. Here, then, there is direct proof that if Nottingham ever possessed this great right, it had been lost for a time, or altered and circumscribed by successive monarchs. Still we must bear in mind the fact that the rights of tenants of this class, though apparently subject to alteration at the will of the reigning monarch, cannot be destroyed and that they revive at the death of the King who has manipulated them. This doctrine may account for a very remarkable charter of King Edward II. (printed at page 77 of volume I. of "The Records of Nottingham"), which, after reciting the charters of King Henry III., which directly confirms that of King John, and gave a right to take "tronage;" and a second charter of the same King, restricting the power of the King's bailiffs, and also

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the charter of King Edward I., which not only confirmed the charter rights of the borough, but gave them power from that date to elect annually a mayor and two bailiffs, one for each borough (on account of the diversity of customs) directly confirmed all the said charter rights.

The charter then proceeds to recite that the burgesses shall henceforth fully enjoy and use the liberties aforesaid, although neither they nor their ancestors have used some of them. If this refers simply to their charter liberties, such a concession would hardly be worth much, since it was obvious that they had not lost any of them, but evidently the scope and meaning of the words were much larger, and it intended to refer to the rights of tenants of ancient demesne, which, no doubt, were once the possessions of the people of Nottingham, as well as of every other manor held under the Crown, and that this was the actual meaning of the charter is tolerably clear, from the fact that it proceeds to enumerate a great portion of these very rights; namely, the rights of tenants of ancient demesne of the Crown of England to plead and implead in their own courts, not to be placed with strangers on any assize, jury, or inquests, that no foreign bailiff should enter their borough, and that they should be quit of *murage*, *panage* (again printed pavage), *stallage*, quayage, lastage, and passage, throughout the whole Kingdom and the whole dominion for ever. The word translated quayage—a word of no meaning—is printed in the latin as kaiagio—apparently a mistake for pikagio—one of the rights of tenants of ancient demesne. If this be so, bearing in mind that King John gave the right of Theoloneo throughout the kingdom by this charter, Nottingham now possessed all the exemptions mentioned in the concord with Lincoln except terrage, pontage, and chiminage.

King Edward III., by his charter, dated the fourth year of his reign, extends to them the exemption of pontage, and he also shows that in King John's time they also possessed the important liberty of having a gaol of their own for the custody of those who were taken or attached in the town, which gaol was in the custody of those who had charge of the town aforesaid. This was a liberty which Chesterfield also enjoyed, possibly from charter rights, but in the case of Nottingham it is not mentioned in any charter set out in these volumes, and from which it may therefore be argued that the borough possessed other rights than those recognised by charter, and possibly all the rights of tenants of ancient demesne of the Crown, though

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this concession can hardly extend to the right of Theoloneo, which was clearly circumscribed by King Henry I.

King Edward III. must have granted a further charter, and if so, a search amongst the Patent Rolls will produce it, for there is a record printed at page 139 which, if correct, gives the borough more than the common rights of tenants of ancient demesne. It purports to be a record of an inquest held before the Steward of the Court of Sir John Darcy, "the cousin," held at Torksey, to inquire whether the burgesses of Nottingham were accustomed to give Theoloneum and other customs (mentioned) at Torksey by land or by water, within fairs or without, after the date of the charters of King Edward III. and of his progenitors. It was found by the inquisition in the negative, and therefore it was decided that the burgesses of the aforesaid town of Nottingham should henceforth there go quit without giving Theoloneum and the other customs.

A charter of King Edward III. was produced, "in which it was contained that the burgesses of the town of Nottingham should be quit throughout the land of the King of England, within and without fairs, to wit, of Theoloneum, *murage*, *panage* (pavage), pontage, tronage, *stallage*, tragium, *quayage*, picagium, *lastage*, and *passage*."

No charter known to us gives the exemptions from picage or tragium, and the other rights were granted by several kings. King John gave the right of Theoloneum; Henry III. gave the right of tronage; Edward II. of murage, panage, stallage, quayage, lastage, and passage; and Edward III. only that of pontage. We are therefore without the charter of Edward III. referred to; or what is more probable, the whole record is a concoction, and this seems most probable, for the question arises, how could the Court of Torksey hold an inquest concerning its own rights, and if it could why call for charters when the proper and only evidence would be certificates? If a real dispute arose between Torksey and Nottingham it would be tried in the King's Demesne Court by the Certificate of Domesday, under the great seal, and the form of the record here given is so irregular as to create grave suspicions of its integrity, when to this is added that the scribe had apparently made a blunder in giving both the exemptions quayage and picagium, and probably also a similar mistake is made in the convention between Lincoln and Nottingham, before mentioned, in giving both chiminage and terragio, which are probably identical, and the same as the Tragim of the charter of King Edward III., produced at Torksey. It would

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seem that there was an attempt at this period to create evidences for the purpose of making compacts with foreign towns, such as Gloucester and Worcester, and other places; this seems to be the case from this consideration. If Nottingham was really a borough of ancient demesne, it must be so by prescription, and not by Royal charter, for no tenure of ancient demesne can be created. All that would be requisite if a trial really took place would be to produce a certificate such as they recited they showed to the citizens of Lincoln, and this clearly was not done. This only can be positively asserted that Nottingham possessed all the rights of tenants of ancient demesne, which were given to her by successive monarchs, showing how valuable such rights were at that date, and what a great superiority Chesterfield holds in this respect.

We learn from the charter of Edward I. that the customs of the two boroughs of Nottingham which they called the English and French greatly differed, so that a bailiff from each was thenceforth to be appointed. It is probable that each before this date possessed this right, and that the real difference created by the charter was the appointment of a mayor as a sort of umpire between them. Probably at this period they were often in conflict. It cannot be doubted that the rights guaranteed to Chesterfield were those of the English borough or the law of borough English, for the customs of Chesterfield agreed with them, and differed from the Norman, especially in the law of devise, proved by the Chesterfield charter. King John's charter to Chesterfield was only a confirmation, and he probably only repeated the terms which his predecessors had used; still, as he did not restrict his words, it might be contended that they imported also a grant of the customs of both boroughs, though this could hardly be, when they conflicted, so that it is safe to conclude that they only extended to those of the English borough. We learn from a charter of Edward III. that one of these boroughs had so decayed that at that period the inhabitants were unable to find a proper person amongst them to take upon himself the office of sheriff, and therefore the other borough was empowered in future to choose two sheriffs annually, like London, and perhaps some other great places. It would be interesting to learn which borough had so decayed, but the records are silent, and no account has been preserved at Nottingham.

That the English Borough of Nottingham was in fact of the tenure of borough English (fully confirming the author's theory upon the identity of the tenures of Borough English and ancient

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demesne) is clear, by certain records. The law of descent alone proves it. At page 173 there is a record of a suit, dated 8th January, 1359, in which Henry Fleming, of Nottingham, sought against Wm. de Chilwell four shillings rent, with appurtenances in Nottingham, because John Fleming, a kinsman of the aforesaid Henry, of whom he was heir, was seized in his demesne as of fee in time of peace, in time of the present King (Edward III.), and took the issues thereof in rents, and in arrears of rent, &c., to the value of half a mark, and died, seized, and from the aforesaid John, because he died without an heir issuing from his body, the fee and demesne reverted to one Adam, as younger uncle, the brother and heir of John, the father of John, who died seized, and because the tenement whence issues the rent which is sought is in the English borough, and by the custom of the town of Nottingham a rent sought in the English borough ought to revert to the younger heir; and from the aforesaid Adam the fee and demesne descended to one Stephen, as son and heir; and from the aforesaid Stephen the fee and demesne descended to the aforesaid Henry, who now seeks, and hereupon he enters suit.

There is a case of descent of lands in the French borough which illustrates the difference between them: 6th August, 1365. William de Walton, of Scardburgh (translated Scarborough, but more probably Scarsdale), and Petronella, his wife, sued John Scot, of Nottingham, and Christiana, his wife, concerning a messuage in the French borough. The right and inheritance of Petronella, of which Henry de Chesterfield, her ancestor, was seized, &c., and because he died without issue from his body the right descended to one William, his elder brother and heir, by the custom of the town of Nottingham—a curious decision, for generally though the elder son succeeded, the elder brother did not; as an estate, according to Littleton, could not ascend but always descended. This decision rather seems to suggest that Littleton's theory, which has been derided, was an invention of his own date.

The owners of lands in the English borough had also a right to bequeath their lands, which no feudal tenant could do at that time. In 56 Henry III. it was found by inquisition that it was a custom of Nottingham that if a man or woman had lands or tenements they could, on their death-bed bequeath, give, or sell them to whoever they pleased. (Abbrevatio Placitorum.) The wills, as well as grants, were duly enrolled in court. (See Peter Moorwood's case, 4th January, 1323, and many other decisions.) In the case of Agnes,

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widow of Richard Grimston, against Thomas de Stafford, and Letitia, his wife (10th January, 1335), it was laid down that tenements in the English borough in a man's possession could be bequeathed, like his chattels or money, according to the custom of Nottingham, so too by the custom of Chesterfield, lands were at this date devisable. The same defendants held lands by the same bequest in the French borough, but they took issue on the fact, and did not set up the custom with regard to those lands, since in fact it could be no answer. This case also illustrates the law of dower in the two boroughs. The widow claimed one-third in the French borough, and one-fourth in the English. This latter figure is probably a mistake, for on the 28th March, 1358, there was an important trial between John de Verdun, of Briklesworth, Kt., and Matilde, his wife, the widow of Ralf (Albini Pincerna), of Crophill, Kt., for her dower, against Walter de Gotham, son of Walter de Lincoln, who had purchased these tenements of Ralf de Crophill, and the question in dispute was whether the husband could sell them so as to defeat his wife's rights to dower, and it was admitted that he could do so in case of a sale for necessity, but not otherwise. The Lady Matilde ultimately obtained one half the estate for her dower.

On 22nd November, 1335, there had been an enrollment of a grant to William de Amyas, of Nottingham, by Robert fil Roger (Albini) de Crophill, probably the father of the above-mentioned Ralf, of certain estates in Nottingham, where Elizabeth, his wife, whose estates they were, was separately examined by the justices touching her consent to the grant. It appears by a case decided 31st December, 1315, between Philip de Tusard, and Cicely, widow of Richard de Bridgeford, of Nottingham, that the only other mode by which a husband could sell or alienate his wife's tenement was by fine in the King's Court, establishing the correctness of Lord Coke's suggestion with regard to private demesnes of this tenure, but not to the demesnes of the Crown. It should be noted in proof that Nottingham was part of the demesne of the Crown of England, that in early times the King always retained the castle, and sometimes granted it with the town to his Queen; that it was always held in fee farm, generally at a rent of £52, and by the Corporation themselves; there is a charter of Queen Elizabeth, Woodville, dated the 11th July, 1465, confirming a reduction by the Kings of the amount of the fee farm rents. In the same way Joan, Countess of Kent, and Lady of Wake, gave a lease to the Corporation of the ferme of Chesterfield.

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There was a free chapel in the King's castle—that is, one not subject to the Bishop of the diocese, but only to the King himself. The mills of the castle were called the King's mills. There was a King's meadow, and, what is still more important, a King's Bench, in Nottingham. 12th December, 1396, one Roger Doket complained that Ranulf Redsmith owed him four shillings, which he paid for the foresaid Ranulf in the time of Lent in the Lord King's Bench here in Nottingham. It does not appear that the judges were here at that date, and the editor of the "Nottingham Records" assumes, apparently without reason, that it is a mistake for the 16th of the King, but it would seem that there was a King's hall in the town, which is expressly excepted in the charter of King Henry VI. from the jurisdiction of the county of the town which he thereby created. The learned editor of "The Records" asserts this to be the present county hall, and this is probable, for the charter recites that therein is the gaol for the counties of Nottingham and Derby, but it is clear that at the same time Nottingham possessed her own gaol. The King's bailiffs are also mentioned in this charter and in other records; Daniel de Lincoln, the King's sub-bailiff, is referred to 19th Dec., 1330, all facts showing the intimate connection between the King and the borough, and proving that it was in fact (even if the incident of the fee farm rent is insufficient to prove it) a portion of the King's demesne. Henry VI. converted the bailiffs into sheriffs, as Edward I. had created the Mayor to rule over them. Many customs of both Nottingham and Chesterfield were exactly similar. A non-burgess was styled a foreigner, just as he was in Chesterfield, and like that town he could not keep open a shop, or buy and sell without a fine paid. Henry VI. gave the Mayor and Corporation liberty to wear cloaks and gowns with fur; the power enabling the magnates of Chesterfield to do so is lost, but they availed themselves of this weighty privilege. They had two Chamberlains as at Chesterfield, and as they had a Court of Record they had also a Recorder, an honour Chesterfield did not share with them. The date of this concession does not appear. Henry III. gave them the right to choose their own Coroner; Henry VI. made the Mayor his escheator; both privileges which were not granted to Chesterfield.

The records of the Nottingham Borough Court preserve a perfect and complete system of pleading, similar to that which we have so recently lost through the so-called improvements of the Judicature Acts. They had pleas and demurrers, the former of various kinds,

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to the jurisdiction in bar, in confession and avoidance. In some cases judgment was asked for on the pleadings; in others issues were joined and juries demanded; one can learn from these short enrollments how truth was extracted and trickery and chicanery prevented. It is indeed to be lamented that through a silly and sentimental idea of abolishing the distinctions between law and equity, the folly of which is now apparent to every one, we have lost at once the grandest and most simple, the most searching and expeditious method of arriving at the truth, that the whole history of jurisprudence can produce; a system which in this country stood the test of at least a thousand years, until it succumbed to the empty declamation and mischievous restlessness of modern law reformers. The men who destroyed it had neither the ability to understand the system nor the art to substitute another, and what they have given to us is so utterly weak and worthless that it is now proposed to abolish it and proceed without any system whatever. It may be asked, why not go back to the time-honoured institutions of our forefathers, to a system which cost the people of this country millions to establish and perfect, and which did produce regularity and order in our procedure where there is now only confusion and chaos?

Before dismissing this subject, reference must be made to the famous statute of Charles II., commonly called the Statute of Fines and Recoveries. At that period, just as at the present day, all true knowledge of the subject of ancient demesne was lost; men's minds were intent upon the destruction of everything bearing the remotest relation to feudal tenures, and it was supposed because this tenure was of an ancient character, that it was necessarily open to objection, and an attempt was made to prevent the operation of the laws cited by Coke and Fitzherbert, by which these rights were restored, but inasmuch as the framers of the Act knew no distinction between the Royal and the private rights of these tenants, they omitted all mention of the former, and as it is a rule in the construction of statutes that the rights of the Crown are not touched unless especially named, it would seem that the statute is wholly inoperative, so far as regards tenants of ancient demesne of the Crown of England. The customs and liberties of Chesterfield may be summarised, by reference to the charters of Nottingham and Derby, to be the well-known rights of Thol and Theam, Infangenetheof and Thelonia. These are the common rights of a borough possessing rights of holding fairs and markets, and without which the business

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of such fairs could not proceed. They are very ancient British terms, and it is difficult at this day fully to comprehend their meaning. The ordinary glossaries and dictionaries confound them, and give the same meaning for several of them, with other terms of the same date, and used for similar purposes. The lowland Scotch have a similar word to Thol in Tolbooth—a booth or edifice in a market, where market dues were paid to the authorities, and which, containing an apartment for the safe custody of market thieves or offenders against the peace, afterwards came to signify a jail or prison. Dr. Charles Mackay, in his invaluable Gaelic Etymology of the English nation, gives us the correct derivation of this word. Diol (Gaelic), fee, tribute, recompense, satisfaction of a claim; buth (Hebrew, beth,) a house, shop, tent, or booth. And this, no doubt, is the correct derivation. We have to seek in the original Gaelic, and very frequently in the lowlands of Scotland, for many of our obsolete as well as our present words, and until this truth is acknowledged, and the learning of Dr. Johnson is valued at its true worth, we cannot hope to discover the true meaning of things. Dr. Johnson, who had a profound ignorance of Gaelic, and an intense hatred of the Scotch, blundered ridiculously over this word, and in despair called it a provincial term; and Nares gives an instance of its user in a metaphorical sense in the phrase, "a dog is 'toled' with a bone." So far from the word having a provincial history it is the common word used in almost every charter, and it exists in our daily language in many cases, for it is only an old form of the modern word toll.

Thol, in its original sense, probably comprised the jurisdiction of the market folks, their power to determine all questions relative to price, to forestalling markets, and as to the rights of persons to buy and sell, and generally to their conduct and order; whilst Theam was the jurisdiction to determine disputes between the market people themselves, and their customs. Witnesses were produced who vouched to warranty—that is, testified to the truth or falsehood of a disputed sale. Infangenetheof was the criminal procedure; the determination of questions of cheating and thefts within the market; outfangenetheof being theft outside—a right which was rarely granted; and Theolonea is as clearly the jurisdiction as to taking and exacting tolls. In fact, these four words comprehend the rights of the bailiff or reeve, or mayor in conducting the market business of a city, at that period rights of very great importance, and which it is clear from

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the charter of King John, were possessed by the citizens of Chesterfield prior to the date of his charter, for in declaring that the men of Chesterfield were to hold their rights, *i.e.*, of a free borough, *i.e.*, one having their rights of Thol, &c., &c., he expressly excepts those who were then enjoying such rights from ancient time, "nisi illi qui priusquam ibi libertates habuerunt." Words omitted from the charter of Queen Elizabeth in the recital of King John's charter.

In addition to these market rights, the Borough of Chesterfield enjoyed also a monopoly of dyeing cloth; the privileges also included a right that if any serf or villein, whencesoever he might come in the time of peace, should continue to reside in the borough for a year and a day unclaimed of his liege lord, he should afterwards be free from lawful claim, except by the King himself. That the undisturbed possession of land for a year and a day after purchase gave a legal title against all claimants (the relations of the vendor), provided such claimants were in England during that period. Residents in the borough belonging to other demesnes were to contribute to the rates. Traders coming to the market were to be free from all arrest except for the King's dues. The burgesses were to have a merchant guild, with all privileges and free customs incident and appertaining thereto, with freedom from toll throughout the kingdom, power to appoint a prepositus (mayor), who should be answerable for the King's dues; and should such prepositus be displeasing to the Crown, the burgesses were themselves to appoint another. For a similar charter the Borough of Derby paid sixty marks and two palfreys, and the fee farm rent of that borough was raised from £30 to £40. In 1202, two years previously, the borough had paid sixty-six marks for a confirmation of their free customs which had been enjoyed by them in the time of Henry I. and Henry II. From the farm of Derby only being £40, when that of Chesterfield was rated at £69, we get at the relative importance of the two places. It is to be noted from the charters that the customs of Derby, like those of Nottingham, date back to the period of Henry I., the son of the Conqueror, and may therefore be reasonably supposed to be similar to those of the time of the Conquest. Indeed, so little change does there seem to be in successive reigns that the very words of the earlier charters are regularly copied and recopied by successive monarchs, and this great antiquity may fairly be claimed for the customs of the Borough of Chesterfield also; indeed, we are not without positive proof of the mode in which Chesterfield was held

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by the members of the same family of Brewer at an earlier period than that of the first charter (the earliest that has hitherto been discovered).

The Red Book of the Exchequer, now deposited at the Public Record Office, affords evidence of many facts the existence of which would otherwise be unknown, the originals from which it is copied being lost. This book fortunately preserves some fragments of what are called certificates of knights' fees. At some period of our history, when it is not exactly known (probably such inquisitions were periodical), there was a kind of inquisition, a sort of Domesday inquiry, as to the tenure of Manors by the great lords, and each one was requested to certify his claims, distinguishing between those which he possessed of ancient feoffment and those of new feoffment. This distinguishment is of great value in determining the antiquity. Of the first kind, it is generally assumed, were those fees which were held under the Conqueror, or under any of his sons, and this would seem to date the inquisition after the usurpation of Stephen, and probably to some period after the accession of Henry II. Since the object clearly was to ascertain what knights' fees had been granted during the reign of the usurper, Stephen, the probability is, therefore, that this inquiry was made immediately upon Henry's accession, and the date generally assigned—the twelfth or fourteenth of his reign—is obviously a false one. For further argument on this point the learned reader must be referred to the author's "History of the House of Arundel," in which the commonly received date is clearly proved to be erroneous, and the antiquity of the inquisition proved to be not later than the fourth year of the King, and probabilities show that the true year was the first of Henry II., if indeed one date can positively be assigned for the whole of these documents. Amongst the records is a return by William Brewer of certain manors held by him at fee farm under the King, which were then valued at half a knight's fee, and the only place mentioned is Chesterfield. This is perhaps the earliest mention of the connection of the family of Brewer with the town of Chesterfield, and it was unknown to all those who have written upon Derbyshire County history, the 6th of John, just fifty years afterwards, being invariably ascribed as the date of the first grant to that family. The Red Book also shows that at the same period (1 Henry II.) Richard, son of William Brewer, held a knight's fee in Dorset under Walter Brito. Although there is no proof of it there is strong probability that the charter printed at page 1 of the

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collection of Royal charters is of the date of 6th John, for curiously it is given by the hand of Hugo de Wells, Archdeacon of Wells, through whom also apparently was given the charter to the town of Derby of the 6th John, so that probably both these charters, which are alike in referring to the customs of Nottingham were of the same date. Who this H., or Hugo de Wells was, is not known. Simon was Archdeacon of Wells in 1199, as appears by King John's charter to Nottingham of that year, but no chronicler has preserved an account of Hugo de Wells. It will be seen from the charter of King John to Richard, son of William Brewer, that he had previously granted a charter to William Brewer, the father, at some earlier period, and it may well be that the charter is that particular charter, as it may have been one of his predecessor's; however, the former hypothesis is more probable, since the charter to William Brewer, the father, was clearly given in the 6th year of that King, for the Close Rolls show that when at Burbeche on the 15th September, in the 6th year of John, G. fil P. (Geoffry Fitz Peter), the Justiciary, attested a mandate to the Sheriff of Nottingham, &c., commanding him to give seizen to William Brewer, of Chesterfield, Brimington, and Witington, with the soke and wapentake of Scarthedale, which the King had committed to him at fee farm. The Chancellor's Roll of 3 John show that for that and the preceding year William Brewer had then the farm of the Honor of Peverell. It will be seen by comparing charters Nos. I., VI., and VII. together how they are granted almost precisely in the same terms, so that it may well be that this charter was that of John, or of either of his predecessors, Kings Richard and Henry II., a William Brewer in all probability, held Chesterfield to farm by grant of Henry I., or at any rate prior to the reign of Henry II., or he would not have been required to send in his certificate, and in all probability in the charter (printed at page 1) by whomsoever it was granted, we possess a counterpart of the original grant to the Brewers: for this is clear, whatever was the date of the charter we now possess, it was no new grant, but only a confirmation of an older one. Little is known of the family of William Brewer, and that little is very confusing, for in fact there were several persons of the name; the most famous of these was a distinguished judge under Henry II. and Richard I. The latter King upon going to the Holy Land appointed him one of the Regents of his kingdom. This is a matter of history, and King John, in one of his charters, described him as his uncle (avunculus), a word, however, of such loose meaning at that period that it may have

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meant nothing more than kinsman, even a second or third cousin, but even that relationship is unknown. That he was a very great personage, very powerful, grasping, and rich, is well known. The author, in his "History of the House of Arundel," before mentioned, has ventured to suggest that he was an Albini of the house of Arundel or Belvoir, and if that be so, the King might accurately describe him as avunculus, for by the custom of Brittany where this family of Albini has resided the children of first cousins called their cousins of the higher degree uncle (avunculus), and certainly the Albinis stood in this near relationship to the Crown.

The origin of the name of Brewer is a mystery, and the author ventures to suggest that it may be taken for the vill of Brimington, which in the first charter printed is called Briweton, though subsequently written Brumington, but it must be noted that the name of Brewer is rarely written with the prefix "de," sometimes without any prefix at all, and sometimes with that of "le," so that it would seem rather to be a personal soubriquet of some kind, possibly a form of the word Breton, the name being sometimes spelt Bretwere, and even Britowere. That a William Brewer had property in Chesterfield besides holding the manor to farm as early as the reign of King Richard, is clear from a record of which Dr. Pegge gives a short note,—(see page 140,)—then in 1789, in the muniment chest at Chesterfield it is numbered 13, and without date: "William Brewer granted to John, son of William Leke, two tofts in the new market of Chesterfield, which he had from William Brewer, in the time of King Richard, before the vill of Chesterfield came into his hands." That this was given early in King John's reign is apparent from the names of the witnesses, and probably by that William Brewer, who afterwards received the vill in 6 John, probably on the death of his father, Judge and Regent of Richard I. It is difficult to say how many William Brewers there were, each one in due course from being junior became William Brewer, senior. The charter of the 17th John was given to William Brewer, younger, the father of Richard (who was the elder brother of another William Brewer, the younger), who died about 10 Henry III. (1226.) This cannot have been William Brewer mentioned in the certificate of Knights, since he probably was living in the time of Henry I., more than ninety years previously. Amongst the Cartæ Antiquæ enrolled at the Record Office is one of King Henry II. to William Brewer of the King's forest of Laberia, "which he held in the time of King Henry,

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my grandfather." There can be but little doubt that this was the holder of the farm of Chesterfield in the first year of his reign, and probably the Regent of Richard I. He, however, must have been the grandfather of William Brewer, the father of Richard, since King John granted to him the forest of Were to hold, as William Brewer his grandfather held it in the time of Henry, the grandfather of his father. Here, then, is proof of there being three, if not four, William Brewers in succession.

It is difficult to determine what relationship existed between the Judge and Regent of Richard I. and Richard Brewer. There must have been two of this name also, one of Henry II., who is mentioned in the certificates of knights' fees, and the brother of the last William Brewer, and son of that William Brewer who obtained a grant of Chesterfield early in the reign of King John, and again in the 17th year of his reign. This seems clear beyond all doubt, and the entry on the Close Roll with the charters prove it conclusively, but we have no distinct proof that his father was son of the Judge, and seeing that the Judge must have been a very old man at the date of Richard's succession; if he was, as there is little doubt, the grantee of Henry I., it may well be that William Brewer, the grantee of 6 John, was his grandson, and not his son.

There is an entry in the Pipe Rolls for Cumberland and Westmoreland, where the family of Brewer had much property, in the third year of John, showing that a William Brewer paid 500 marks for the marriage of the heiress of Hugh Morville (the savage murderer of St. Thomas A'Becket), either for his son Richard or for his nephew, Richard Gernon, a younger son probably of Ralf Gernon, of Essex, who obtained a grant of Bakewell from Richard I., who or whose father married a sister of William Brewer. It would seem that Richard Brewer did not marry the lady, for in 6 John Richard Gernon fined with the King 600 marks that he might marry her, on which occasion Reg. de Clifton of Wilts, Ralf Gernon, of Essex; Henry Pincerna, of Devon; Peter de Stokes, of Wilts; Robt. de Bikel, Wm. de Inman, Robt. Saxville, Ric. Flanders, John fil Richard, Ralf de Bray, all of Devon; Wachel de Bosco, of Norf., and Wm. Duc, were his sureties.

We learn the date of the charter to Richard Brewer from an entry on the Close Roll dated at Woodstock the 19th day of Nov., in the 15th year of King John, commanding the Sheriff of Nottingham, since the King had accepted his homage for the Manor of Chesterfield,

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with all its appurtenances, which William Brewer, his father, held of us saving only the farm which the said William Brewer was accustomed to pay, to give full seizen thereof to the said Richard Brewer.

Richard Brewer must have died very shortly afterwards, for on the 3rd January, in the 17th year of his reign, when the King was at Pontefract, there is another writ to the Sheriff of Nottingham and Derby to give William Brewer full seizen of all the lands in Chesterfield which had been his sons, the King on the 16th August following giving him the charters printed at page 24. This charter, it will be noticed, whilst it determines the tenure of the two last William Brewers, entirely changes the terms upon which it was held; up to this time the sum of £69 had been paid for the rent of Chesterfield alone, Scarsdale £10, and Snodington paying £8, and the service being two parts of a knight's fee, which was now changed for three knights' fee, the rent not being extinguished but excused. This is the most important difference, for had it been extinguished the manor would seem to have ceased to be of the ancient demesne of the Crown of England if such a change of tenure was possible. This point, however, does not appear to have affected to change the tenure, or to convert what had been of ancient demesne into one of knight's service, for independently of the charters confirming the rights of the tenants of ancient demesne, there are a number of entries upon the Close Rolls which show that no such change was made, and inasmuch as possibly these rights are of value, the entries are here given to dispose of the notion which might naturally arise upon a consideration of the charters.

It would seem that William Brewer was one of those fortunate persons who was often excused payments due from him to the exchequer, and the King at that date often exercised this power, and even went so far as to excuse the payment of their debts, particularly when his favourites owed money to the Jews, which was a courtly habit in those days as well as in these more enlightened times. There is a writ of the King's, dated at Bruges, the 11th of August, in the eighth year of his reign, excusing William Brewer the payment of forty marks out of 100 marks which he then owed to the exchequer on account of Chesterfield. There is a very important entry headed de quiet claimacione firma maios, dated the 8th day of June, in the 18th year of his reign, at Devizes, directed to Philip Marc, informing him that the King had released (quit claimed) William Brewer of his

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farm for Chesterfield and Snodington by charter, and commanding him to let him go in peace; "et ipsum et omnia sua manutenetis te protegatis tanquam nostram dominicam," clearly showing that his demesne was preserved, only that the present farmer of it was excused his rent; in other words, the King allowed him to enjoy part of his own demesne free of rent. In the 3rd of Henry III. there is the following entry in the same rolls:—

The King to the Barons of his Exchequer, health excuse (computate) to William Brewer, for the Manor of Chesterfield, in the County of Derby, with Bruminton and Witenton, with the soke, £69; and for the Wapentake of Scarsdale, £10; and for Snodington, in the County of Notts., £8; and for Axminster, in Devon., £24; and for the fishery of Kingswere, in Somerset, 20 shillings; together £112, for which the said William has acquittance (quietacium) by the charter of the Lord John the King our father. Possibly this was given because there was a doubt whether the quittance extended beyond the life of the King granting it.

In the 4th of Henry III. there are several writs relating to William Brewer; one, dated the 12th of March, excuses him from paying to the exchequer £200, which the King allowed him for his sustenance in his service; another, dated the 21st June, addressed to the Bailiff of the fair at Hoyland, ordering him to release certain cattle of Robert Parmenter, Robert Beyston, Will de Brug, Edwin de Edenstowe, and Adam de Ashburn, and Wulnoch of Chesterfield, for a debt which Richard Besant and Arnold Bernwell had exacted from Robert de Walton and Ralf le Coifier, men of William Brewer, of Chesterfield, because they were not capital debtors or pledges, as alleged, a procedure which exactly tallies with that followed in the Record Court at Nottingham. But the most important entry is of the date of 28th July, when the King, reciting fully the Charter of King John, of the 16th August of the 17th year of his reign (printed at page 24), commanded the Barons of the Exchequer to excuse the said William Brewer from the payment of the said sum of £112 for the said lands and tenements.

William Brewer himself died probably in the 10th year of King Henry III., though no record of the event has been found. On the 5th of February, in that year, there are several important entries in the Close Rolls. The first is a writ in a very unusual form, probably because of the peculiarities of the tenure, and to prevent seizure for the farm rent, it commands the Sheriff of Nottingham and Derby to

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give William Brewer full seizen of the vill of Chesterfield, with the Wapentake of Scarsdale, and their appurtenances, and the vill of Snotington, which he had taken into his hands by the King's writs, and then it goes on to say that if any one should afterwards seize these properties they should be restored to William Brewer. Similar writs were sent to the Sheriffs of Devon, Northampton, and Somerset, for the towns of Axminster and Stoke, and the fishery of Kingswere. Then follows another writ that William Brewer had fined with the King to have these properties, and commanding the Sheriff to give him seizen thereof, reciting that they had been the property of his father, who was then dead.

On the 19th of June, in the same year, the King granted to William Brewer that he might have the privilege of taxing his men of Chesterfield whenever the King levied taxes upon his burgesses and his own demesne throughout England, and the Sheriffs were warned to see that such taxes were reasonable, thus fully recognising the fact that they were taxable as tenants of ancient demesne, and simply permitting a mesne tenant to exercise the Royal Rights.

This it was no doubt which produced that remarkable Concord (printed at page 28), a photograph of which is also given, which has evidently been preserved by the town of Chesterfield with religious veneration.

It is a very remarkable document, being evidently a compromise of rights, as noticed in the text; it stands on its own merits. All the rolls which should bear record of it are lost. It was probably preceded by litigation of some kind, but the Rolls of the King's Court contain no entry of them. Possibly the Pipe Rolls of the period, if searched, might produce evidence of some payment for licence of concord, but otherwise, as noticed in the text, there is no corroboration of it. It is, however, recited in Wake's charter, and he distinctly refers not only to the final concord sealed by William le Brewer, the younger, but to a charter of William Brewer, the elder, of which no trace can be found. In the 10th year of Henry III. (Easter term) William, the Dean of Lincoln, had a suit at law with W. Brewer, junior, concerning a prohibition. The Dean held property in Chesterfield, and he held his court there, but it is uncertain to what property this suit relates—possibly to some small property purchased by the Brewers within the manor. The last William Brewer died about the 16th of Hy. III., when his estates were divided amongst his coheirs, the issue of his sisters. It is clear that Chesterfield fell to the lot of

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the Wakes, but the Testa de Nevil has a puzzling entry concerning it. Joan Wake, widow of Hugh, had then custody of the heir of Hugh, to wit, Chesterfield with the wapentac, except £16 land which William de Percy held as one of the heirs of William de Brewer, as also in Sneinton, Axminster, and Kingswere.

The Close Roll of 17 Henry III. refers to a payment of 60 shillings out of the issues of the lands which belonged to William Brewer, and which was then in the custody of Peter de Ryval; arrears of £6 which they receive out of the Manor of Chesterfield; four marks out of the goods of the aforesaid William Brewer, in the hands of his executors, arrears of the King's Rents. This mention of Sneinton would seem to indicate that the Manor of Snotington or Snodinc, as it was called in one charter, was intended for it, and Thoreston strongly supports this view; but it is not without doubt. No doubt Domesday records that the King held a place called Notington, in Nottinghamshire, but there is no indication of its locality. However, the best evidence of the identity of the place is that in 36 Henry III. After the last William Brewer's death Patric de Chaworth, who was one of his co-heirs, died, seized of Sneinton, and he had previously granted it to Henry de Albiniaco and Hugh, his brother, for their lives, in 4 Edward I. the bailiff of Henry de Albiniaco refused the King's writ. Afterwards it came to Eva, wife of Robert de Tibetot, Patric Chaworth's daughter, and they sold it to Pierpoint, and a Roll of Plac de Banc, 17 Edward I., rot. 62, shows that Henry de Pierpoint and Annora, his wife, offered themselves against Robert de Tibtoft and Eva, his wife, to warrant them a third part of Sneinton, which Hugh le Despens and Isabella, his wife, claimed in dower. It must not be forgotten that the Testa de Nevil calls the place Sneinton. There is a record of a remarkable suit relating to Sneinton of great interest in the Coram Rege of Mic. Term, 13 Edward I., rot. 28, between Henry Pierpoint and Annora, his wife, who were sued by their tenants of that manor because they were not allowed the privileges of ancient demesne. Plaintiffs denied that they were such tenants, and claimed them as their villeins, and it was so found; but in Easter term, 15 Edward I., a jury found that Sneinton was never called Notington, and that this place, which was clearly of ancient demesne, was on the other side of Nottingham, by Arnold—a place, however, which cannot now be found. Thoroton denounces this as an unjust verdict. Had he lived to see so much flagrant injustice done in the courts of law in these days, he would have spared his indignation; but in his time there was faith in the purity of justice.

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The history of the families by whom Chesterfield and its members were held in early days is of especial interest and value in this inquiry, particularly with reference to the date, and hence to the value of its customs. It has generally been supposed that Chesterfield formed a portion of the Honour of William Peverel; and Glover, in his "History of Derbyshire," distinctly asserts that William the Conqueror gave the town to his son; and he adds that Henry II. seized it upon the forfeiture of his descendant, William Peverel, in consequence of his part in the foul murder of the Earl of Chester—a participation, however, which some historians deny—and it is quite clear that Glover and the rest are wrong with regard to the seizure by King Henry II. The entry of the Red Book of the Exchequer shows that William Brewer held it at his accession not as a fee but at fee-farm. There is, however, proof that the Britos of Walton held their Manor under William Peverel, for subsequently it is so held of his honour.

Henry II., when only Duke of Normandy and Anjou, probably soon after the battle of Lincoln, by a charter which the author in his "History of the House of Arundel," overlooking the fact that he therein styles himself Earl of Anjou, has attributed to Henry I. (possibly it is a confirmation of Henry I.'s charter), granted to the Earl of Chester, amongst other property of great value in other counties, "Nottingham Castle and the Borough, and whatever he held in Nottingham, and the whole fee of William Peverel."

Derbyshire historians deny that the King granted Derbyshire, because the Derby mentioned in this charter in all probability, or perhaps only possibly, related to West Derby. But inasmuch as West Derby was parcel of the honour not of William Peverel, but of that of the Earl Roger, Pictaviensis, which was also included in this charter, it is difficult to say which of the places the Derby so named really pertains to; but it is equally clear that Derby did pass, whether it was expressly named in the charter or not, for it was clearly part of Peverel's fee, and if Chesterfield was ever held by the Peverels this would likewise be included in the grant, but it is clear, looking at the statement of the Red Book, that it was not included at that period. The importance of this charter to the Earldom of Chester seems to have been overlooked by historians in considering the probabilities that William Peverel poisoned the Earl of Chester, for it seems to afford a terrible reason for his animosity and revenge. This grant of Henry, Duke of Normandy, and Count of Anjou, was

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confirmed by Stephen in the ninth year of his reign, as appears by the records of the Duchy of Lancaster, proof that it must have been made about the time of the battle of Lincoln, the only period indeed when Henry was in a position to be able to grant it. But the consideration which sets at rest all conjecture upon this point, and positively contradicts the assertion that Chesterfield ever formed part of William Peverel's fees, is the fact that it was a place of ancient demesne of the Crown for centuries afterwards, and therefore, as we have seen, could not have been granted in fee to any one. It is not, therefore, to the history of the Earls of Chester that we must resort, nor to the Peverels, but to the families of Brewer and Brito, and we shall find that both of them are closely identified with that of the Albinis, Lords of Belvoir and Earls of Arundel, and that in all probability they are all of them of the same stock and origin.

The author, in his "History of the House of Arundel," very recently published, has deduced the history of the Albini family from the ancient Vicompts of St. Sauveur, a younger branch of the ducal house of Normandy, the progenitors of the Norman kings of England, a fact which if the Brewers and Albinis are identical, accounts for King John calling William Brewer, Lord of Chesterfield, his uncle. The Viscounts of St. Sauveur were of the blood in the male line of the Kings of England, indeed they were the rightful successors of the Crown (excluding the right of female heirs), for King William being a bastard was clearly a usurper, but that bar being thought lightly of in that extremely vicious period, William Peverel, whom King William admitted to be his natural son, would stand in the same relationship to them, and overlooking the stain upon his birth—and who would dare to be over-curious in those days?—he would also be the near kinsman of the Albinis. Amongst the knights of William Peverel who aided him in the foundation of Lenton, probably before the 8th year of Henry I., were two—Robert de Heriz and Roger Brito, of Walton—who are of especial interest to this inquiry, the former, from several documents was, it appears, sometimes called Hericourt, and it would appear from the certificates of knights' fees that his true name was Harcourt, a family descended from that of Gunnor, Duchess of Normandy—always highly favoured by the Norman dukes. The Red Book records that Ivo de Harcourt and William fil Walkelin held three knights' fees of the heirs of Galfred Marmion. This Roger Brito, of Walton, was, there is but little doubt, a relation, possibly a cousin, of William Albini, Lord of Belvoir, and of his brother, Wm. Albini, the elder Earl of Arundel.

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We have an early record of the name of Brewer from a charter of the 2nd year of King John, granting to one Richard de Belhus (from certain records probably the name is Boteler or Butler) certain lands in the Manor of Ramsden, in Essex, which were formerly held by Renfrey de Bruere. When this Renfrey de Bruere held this property, and who he was, we have unfortunately no record. Ramsden was held at the Conquest by Ralf Baynard, whose grandson forfeited it at the commencement of the reign of Henry I. for complicity with the Malets in their rebellion, when the King granted it to Robert de Clare, son of Earl Gilbert, of Tonbridge; and subsequently we find Ralf, the son of Roger, holding it under him. William Brito, of Belvoir, was a tenant of the house of Clare at Domesday, and the widow of Robert de Clare married his son, William Albini Brito, of Belvoir, brother of the first Earl of Arundel, and hence it was (most probably) that Ralf, the son of Roger, held this property under him; Ralf was undoubtedly a Brito, and the brother of Roger fil Reinfrey, no doubt the individual referred to in King John's charter to Richard de Belhus. The Earl of Clare apparently did not approve of this change of tenants, for in the 13th year of King John he brings his suit against this Richard de Belhouse (see Rotuli Curiæ Regis), and compels him to prove his title. He asserts that he had it of the gift of Roger fil Renfrey, and he calls Ralf de Briuer, heir of the said Renfrey, to warranty. Ralf comes and declares that the land was given to Ralf Brito, his uncle (no doubt Ralf fil Roger, the tenant of Robert, of Tonbridge), who gave it to Alice, his mother, and that it was the "purkacium" of Roger, her husband, which G. Lond gave to him, and he profers the charter. This G. Lond is doubtless Gualterus, or Walter fitz Reinfred, who was Bishop of Lincoln and Archbishop of Rouen, the brother (probably the elder brother) of Roger fitz Renfrey, the judge, the friend of William Brewer, of Chesterfield. Another lawsuit (Rotuli Curiæ Regis, Trinity Term, 7 John) makes this more clear. Gilbert de Gant sues Reinfred fil Roger fil Reinfrey (the son of the last defendant) for land in Hulmo and Bekington, in the county of Lincoln, and he also called Ralf de Bruer to warranty. He produced a charter between Roger fil Reinfrey and Robert fil Hugo (de Gant), by which it appeared that Earl Simon de Liz (the father of Robert de Clare's widow, who married William Albini, of Belvoir) gave to Roger fil Reinfrey this land in exchange for land in Toft and Manthorpe, which was Roger's inheritance, and which grant Robert,

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the father of Gilbert de Gant, had duly confirmed. This Robert de Gant was Lord Chancellor of England in the time of King Richard, and Gilbert, the plaintiff, himself married Alice, a sister of Ralf Albini or Brito, of Naburne.

Roger fil Reinfrey was closely connected with the Gants, having married Rohaise, the daughter of William Romara, Earl of Lincoln, the neice of Ranulf, Earl of Chester, and which lady was the widow of Robert de Gant's brother, Gilbert de Gant, Earl of Lincoln (jure uxoris), who died 1156, and when his daughter Alice married Simon St. Liz, Earl of Huntingdon, before mentioned. These extraordinary combinations and statements of relationship seem to indicate that the true origin of the name of Brewere or Bruer was Belvoir, for it is clearly stated that the Britos and Brewers were brothers, and we shall find the two families closely intermixed in whatever county we find them. Now, Chesterfield Records show that William Brewer held a King's weir in Somersetshire, a fact of small importance in itself, but suggestive that he must have held other property there in order to enjoy it, and we find that Somersetshire was in fact the headquarters of the Albinis of Belvoir during the greater part of the reign of Henry I., when for some reason they seemed to have been excluded from the enjoyment of Belvoir, which previously to the reign of King Henry they had enjoyed. The property held by the Britos, of Belvoir, in Somerset, can be readily identified. The head of their barony was Petherton, and it remained in the Albini or Brito family till the reign of Henry VIII., when the last Daubeny, who was Earl of Bridgewater, transferred it to his nephew Thomas de Arundel, the first Lord Arundel of Wardour, whose descendant, the present Lord Arundel of Wardour, now represents the chief branch of the house of Albini, or St. Sauveur, now remaining in England. That Roger fil Renfrey, probably the second husband of the Countess of Lincoln, also had estates in that county, appears from the Red Book of the Exchequer, and this property he had in the 7th and 8th years of Henry II., but unfortunately it is not described by name.

William Albini, first Earl of Arundel, had, amongst others, a son named Reiner, who is lost to history, and whom it is tempting to endeavour to identify with Renfrey of Ramsden, but it is impossible that he could have been a son of Queen Adeliza, and there is no record of William Albini having been previously married. That there was the closest connection between the Earls of Arundel and

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Roger fil Reinfrey, the judge, is apparent, from the fact that his brother, Walter de Coutances (the old name of the St. Sauveur family), who subsequently became Bishop of Lincoln and Archbishop of Rouen, was before his elevation to the episcopal bench Sheriff of the Earls of Arundel, in Sussex. He was succeeded in that office by his brother, Roger fil Reinfrey, in 25 Henry II., and in the first year of King Richard, Roger fil Reinfrey succeeded William Brewer, Lord of Chesterfield, in his Sheriffdom of Berks, and about the same time, no doubt through the influence of William Brewer, who was now Regent in Richard I.'s absence, he was appointed a Judge of the King's Court.

General Harrison, the author of the last "History of Yorkshire"—a very remarkable book, composed almost exclusively from extracts from that most valuable of all the public records in an historical and genealogical point of view, the Rotuli Curiæ Regis—has kindly given to the author some entries relating to the family of a Ralf Albini, of Naborn, which, if properly followed up, might throw much light upon the immediate subject of this inquiry. At Domesday Robert Todeni held both Naborn, in Yorkshire, and Aburne, in Leicester, and it would seem that the same person, Ralf Albini, subsequently held them both under William Albini, Lord of Belvoir. In all probability there were two, if not three, Ralf Albinis in succession, but the history of the family has been lost, and but for the Rotuli Curiæ Regis no trace of it had been preserved. Intermediately between Robert Todeni, of Domesday, and Ralf Albini, another Robert Todeni seems to have held Alburna, and this at a period very near the close of the eleventh century, certainly prior to 1108, for Roger Bigod attests his charters. One of the sisters and coheirs of the last Ralf Albini, of Aburna, married Gilbert de Gant, before-mentioned, the brother-in-law of Roger fil Reinfred. A charter of Ralf Albini, of Aburna, still exists, with his seal attached, the original seal of the Albinis, of Arundel, and the Mowbrays. This charter was confirmed by Alexander, Bishop of Lincoln, 1123-47, and the names of the witnesses prove that it was only one generation later than the previous charter of Robert Todeni, for the same knights witness it, but with the addition of their sons; he must therefore have been of an earlier generation than the lady who married Gilbert de Gant some fifty years afterwards, and in all probability he was identical with the donor of Felley. A very interesting question arises whether Robert fitz Ranulf, of Alfreton, who seems to have

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borne precisely the same arms as the Belvoir family—the eagles, the lion, and the chevrons of Ivri—was not of this family.

To return to William Brewer, we find him at a very early period interfering with a barony in Somersetshire, which, since the time of Domesday, had been held by a member of the family of Brito, and of which he ultimately obtained the entire possession.

At the date of Domesday Angerus de Brito held the Barony of Odcombe, which subsequently became the property of his son, Walter Brito. He would seem to have forfeited it, for very early in the reign of Henry II. it was on lease from the Crown. In 4 Henry II. the Sheriff accounted for the ferme. In 7 Henry II. Roger Brito paid £20 to the King's exchequer for fifteen knights' fees. There seems reason for suggesting that he was identical with Roger fil Reinfrey. From 11 to 25 Henry II. a Walter Brito seemed to have held it, after which it was again in the King's hands. If the former supposition is correct, this Walter Brito was no other than Walter, Archbishop of Rouen, who disappears from the Sheriffdom of Sussex at this period. Again, from 7 to 9 Richard I. a Walter Brito held the barony. Various conjectures as to the relationship of these several persons, each called Brito, have from time to time been made, but, so far as it is known, no one has been so fortunate as to discover proofs of any relationship, and looking at the fact, very common at that period, that anyone becoming possessed of a manor or honour, exchanged his name for that of the new territory, it may be that they were no relation to each other, but only successive farmers under the Crown of England. This only is quite clear, that the barony was frequently in the King's hands, and that William Brewer, the judge, in some way intermeddled with it. In 1 Henry II. Richard, son of William Brewer, held a knight's fee, which had been that of Roger fil Milo's, and at the close of the reign of Richard I. Walter Brito had forfeited his lands, or for some cause they had again come to the King's hands, and early in that of John part were purchased by Brien de Insula, whose origin is not known, though possibly he was an Albini of the house of Mowbry, of the Isle of Axholme, and the other part William Brewer obtained, and later the whole barony passed into his hands. It was in the second year of King John that Brien de Insula obtained a grant of Walter Brito's lands for 120 marcs and one palfrey, possibly under some show of relationship, for he obtained the marriage of Thomas, the son of William, the son of Walter Brito, then a minor, and married him to

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his own daughter, Alice, with whom he gave the Manor of Starclive, in Derbyshire, one of Hubert fitz Ralf's manors, then or lately in the King's hands. It has generally been assumed that Walter Brito left two co-heiresses, for one Walter Croc and Richard de Hescombe were described in the inquest taken on Johanna Brewer's death in 49 Henry III. as his next heirs, and it has been conjectured that they were sons of the sisters or aunts of Walter; but seeing that Croc is probably another name assumed by the Britos of Essex, and the Hescombes afterwards called themselves Britos, this relationship is extremely doubtful. What is clear is that in 12 and 13 John Richard, son of Lord William Brewer, possessed the barony, no doubt the Richard Brewer of the Chesterfield charters, and possibly (though not probably) the tenant of 1 Henry II., and from the last mentioned inquisition it appears that Johanna Brewer (his mother) held the barony in dower. The jury found in effect that it rightly belonged to the Britos, but that it had been taken from them, " per potestatem Domini Willielmi Brugere veterioris," clear proof of some illegality. Nor was the Odcombe barony the only Brito property which Lord William Brewer engulfed. At his death the fee of Sydling, in Dorsetshire, which had been held by Walter fil William Brito, and was then held by Thomas Brito, was found to be part of his estate, and it was allotted to Margaret de Assertis, one of his coheirs, whose daughter and heiress (Gundred) brought it to Pagan Chaworth.

The history of the Britos of Walton has been investigated by a very learned antiquary, Dr. Johnston, of Pontefract, who lived in the last century. His elaborate work, in three folio volumes, was apparently compiled for the benefit of the Foljambe family, who succeeded to the Walton and Chesterfield property, and it is still in the hands of Mr. F. J. S. Foljambe, of Osberton, who not only most kindly gave the author access to it, but permitted him to examine closely his magnificent collection of records, from which, by the aid of records deposited at Belvoir Castle and Hardwick Hall (to which apparently Dr. Johnston had not access) the author has been able to throw a greater light upon this matter.

Dr. Johnstone, though unfortunately without giving his reason—no doubt he had good reason for it—asserts that Roger Brito, the first of that name settled at Walton, was of the family of William Albini Brito, of Belvoir, whom he asserts was the son of Robert Todeni, Lord of Belvoir, at the time of Domesday, which at his date

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was supposed to be the true origin of the family. The author fortunately, through the kindness of the Duke of Rutland, having had full access to the muniment room at Belvoir Castle, of which, through the kindness of Mr. Green, his Grace's steward, he was able to take great advantage, has discovered amongst that invaluable and very extensive collection of records certain original writs of King Henry I., which undoubtedly prove that the Heralds from the time of Dugdale, when first the idea was broached, and even that great writer himself, had been in error in supposing that William Albini Brito, Lord of Belvoir, was identical with William, the son of Robert Todeni, the Domesday owner. The author has proved to demonstration, by means of these writs and other records, that William Albini became possessed of Belvoir through his marriage with Maud Bigod, the daughter of the great Roger Bigod, who himself married Adeliza de Todeni, the daughter, and eventually permitted to be the heiress of Robert Todeni, of Belvoir, of the time of Domesday, and the same documents prove conclusively that this same William Albini Brito was not, as the Heralds assert, called Brito, to distinguish him from William Albini, the King's Pincerna, but that he was in fact that same person. His history, and that of his family, the author has already given at large in his "History of the House of Arundel." William Albini Brito was the son of Roger D'Ivri, the King's Pincerna, and he obtained his name of Brito through the banishment to the Court of Brittany of his ancestor, William de St. Sauveur, Lord of Albini or Aubini, in the Cotentin after the battle of the Val de Dunes in 1045, the family of St. Sauveur, after that of Guy, of Burgundy, being (in the paternal line) the next heirs of the ducal house of Normandy.

Although Nigel Albini, one of this family, fought at Senlac, and received certain grants from the Conqueror, at Cainhoe, in Bedfordshire, yet the head of the family, owing to their banishment from England in the time of William Rufus, seemed to have returned to their Breton estates, and it was only after the battle of Tinchebrai, when William Albini Brito, the Lord of Belvoir, turned the tide of battle in Henry's favour, and Nigel, his younger brother (the after ancestor of the Mowbrays, Dukes of Norfolk) captured the unfortunate Robert, Duke of Normandy, with his own hand, and so gained the gratitude of Henry I., that they finally settled in this country. Roger Brito was of Walton and Calow certainly within two years of this date, and the head of the family, William Albini Brito (the

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King's hereditary Pincerna) was restored to his office, but before he settled at Belvoir he lived at Petherton, in Somerset, and elsewhere in the west of England, Manors which had been forfeited by his kinsman, Roger de Courcel, and there probably settled the Britos of Odcombe. The earliest charters at Belvoir show that in the lifetime of Roger Bigod, that is ante 1107, William Albini had brothers named Roger, Robert, and Ralf, and a cousin also named Ralf, but unfortunately they do not show where they were settled. Little doubt, however, exists but that Roger, of Walton and Calow, was one of them. The history of the Manor of Ramsden gives a trace of the relationship with the Bigods. It is a matter of very great historical interest, as well as of importance to the elucidation of the history of the customs of Chesterfield to identify, if possible, Roger Brito, of Walton, in Chesterfield, with him of that name, brother of the Lord of Belvoir; in other words, to confirm the theory of Dr. Johnstone. This cannot at present be done by direct evidence, but only by the accumulated testimony of distinct facts, which taken separately, perhaps, would hardly warrant a definite conclusion, but when multiplied together by the doctrine of chances, present a proof almost irresistible, at any rate of so high a probability that no reasonable man would resist the conclusion, and remembering that Henry I. granted certain manors to William Brewer, the grandfather of William Brewer, the judge, as well as to that William Brewer himself, it would seem to follow that this grandfather must have been William Brito, Lord of Belvoir, and that Roger Brito, who granted lands to Lenton was the intermediate ancestor, or possibly his brother.

It is therefore rather to the history of the family of Brito, of Walton, who long remained lords of that place, and who with their descendants the Foljambes are buried in their chapel attached to Chesterfield Parish Church, than to that of the family of William Brewer, the judge, who left no male issue in the second generation, that we must look for enlightenment on this point. It is clear, from the foundation charter of William Peverel to Lenton, that the Britos looked to him as their feudal lord, and seeing that Peverel was in fact Earl of both Nottingham and Derbyshire, in which counties they had their estates, and looking also at their common relationship to the Conqueror, this feudal tenure existed as a matter of course, and did not indicate any absolute connection between them. They were farmers under the King of certain

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manors of the Crown demesne, and they necessarily for adjacent estates became the tenants of the Earl, the viceroy of the King. This connection may account for the assertion of Derbyshire historians that Chesterfield was held by the Peverels, but as a fact it would seem that they had nothing to do with it, as it was part of the King's demesne, though they may have held a nominal sovereignty over its lords by reason of the Brewers and Britos holding other estates under them.

The Priory of Radford, near Worksop, affords some information respecting the family of Brito, which unites the families of Belvoir and Derbyshire by an unmistakable tie. Ralf Brito and his son Reginald de Annersley, the ancestor of the family of that name, gave the Church of Felley to this priory. Reginald de Annersley's seal was a lion passant, so was that of Ralf Brito, of Aburna, near Lincoln, which is still appended to his charter granting the Church of Aburna to Belvoir Priory. This charter cannot be later in date than the year 1147, since it was confirmed by Alexander, Bishop of Lincoln, who died that year. In all probability Ralf Brito, of Felley, is identical with the Lord of Aburna, and as it will be seen presently not only the ancestor of the Britos of Walton and the Annersleys, but also of the family of Fitz Ralf, of Alfreton. The charter of Reginald de Annersley was attested, amongst others, by William Bretton, Hugh de Annersley, and Daniel, son of Iwan, the father of an important personage who will be mentioned presently. There was a lawsuit between Reginald de Annersley and one Leonia de Reines concerning the Church of Annersley. The lady was of the family of Edward, of Salisbury; that is of Chaworth paternity, and maternally of that of Roger de Reines, of Stathern, one of whose under-tenants was Iwan Chauveni, father of Daniel. She married Robert de Stuteville, and was the mother of Henry de Stuteville, who by some title acquired half the honour of Ralf fitz Hubert, under whom the Britos held the manor of Annersley. Derbyshire genealogists are in a terrible state of muddle with respect to the barony of Ralf fitz Hubert, and generally assume that Hubert fitz Ralf, who held the other half of this barony, was son of Ralf fitz Ralf, son of Ralf fitz Hubert, but there seems to be no warrant for this supposition. There were many families each called fitz Ralf in Derbyshire at this period, who are apparently unconnected with each other. Again the genealogists are at fault in deriving him paternally from Ralf fitz Hubert. The probabilities are that Hubert fitz Ralf, or his father,

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and the father of Leonia de Reines, each married a co-heiress of Ralf fil Hubert, and it is also most probable that Ralf fitz Hubert was that son of Hubert de Ria who became Castellan of Nottingham, as Dugdale mentions, and whose brother, Henry, married a daughter of Robert de Todeni, of Belvoir. The name of Ria or Rye disappears in Derbyshire records, but it crops out again, tempe. Edward III., in the person of Ralf de Rye, Lord of Whitwell, who, it appears from a quo warranto of the fourth of that King, with his ancestors, held a park there from time immemorial.

There appears to be a very close resemblance between the coat armour of several Derbyshire families and that of the Albinis of Belvoir, the importance of which, if the suggestions which arise from it are noteworthy, cannot be over-estimated, for not only does it tend to prove their relationship, but it establishes the date of the use of coat armour at a much higher antiquity than is generally credited. The families of Ralf fitz Hubert, of Musard, of Foljambe, of Brito of Walton, and of Chaworth, all bore with more or less variety the chevrons of Ivri, and the same arms are bore by the Frechevilles, the Foljambes, and the Daniels, who derived from them. It is not absolutely clear what arms Ralf fitz Hubert bore, and these arms, which were probably his, are of too early a date to give the tinctures and metals, being simply carved on stone, but modern genealogists—Coxe, Glover, and others—finding the arms which were known to be borne by Musard and Alfreton in manors which are also known to have been Hubert fitz Ralf's, ignores his claims, and attribute them to the two former families. This is the case both at Beighton and Barlbro', which were Ralf fitz Hubert's manors. He also held partly Newbold and Eckington, showing a close connection with Chesterfield, and in conjunction with Ascalf Musard held Killamarsh. The barony of Hasculphus Musard became divided between Hubert fitz Ralf and Robert de Stoteville, each, according to the Red Book, acknowledging that he owed the payment of fifteen knights' fees, Henry de Stoteville answering for his father's share. The family of Freschville partly succeeded to the estates of the two families of Hubert fitz Ralf and Hasculphus Musard, and bore a bend between six martlets, evidently a combination of the arms borne by the Albinis of Belvoir and Arundel, and these same arms are borne by the Foljambes and Daniels, of Tideswell. It would seem that in 3 Edward I., Robert de Stoteville held half a barony in Nottingham with Ralf de Freschville; his wife, Leonia, therefore, would seem

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to be the co-heir with Julienne fitz Ralf. Matthew de Hathersage, who was probably a Brito, of Walton, married a sister and co-heir with the wife of Ankerus Freschville and Nicolas Musard, and he had certainly land of Nicolas Musard of the fee of Staveley, which Richard, son of Robert Brito, had of him in Newbold; and this land Richard Brito gave to Welbec Abbey. In 12 Edward I., Matthew de Hathersage being then dead, his manor of Hathersage, which was also held of the Honour of Staveley, were held by one Oliver de Langford, by the service of one knight's fee. This is the same Matthew Hathersage who granted six acres of arable land in the field of Newbold to the Church of Chesterfield, and which Hugh (Brito), of Walton, on Wednesday, the day after the assumption of the Blessed Virgin Mary, in the year of our Lord 1234, acknowledged to have received from William de Thornico, Dean of Lincoln, by charter. This gift seems to have been made upon the anniversary of the day of dedication of Chesterfield Church, but the word anniversary having been omitted, an error has arisen amongst Derbyshire historians in supposing that this gift was coeval with the foundation of the church. The Lords of Alfreton again bore the same arms, with a difference in colour; very strong presumption that they belong to the same family, but so little is known of the distinguished founder of Beauchief Abbey that his family is a matter of debate. Dean Stanley seeks to identify him with Robert de Broc, son of Ranulf, the Marschal of Henry II., who took so leading a part in the murder of the Archbishop of Canterbury. There is no doubt but that Beauchief Abbey is dedicated to the memory of this saint, but the idea of the identity of the two men rests upon the single fact of identity of Christian names. The arguments adduced in support of this strangely suggested identity are weak and inconclusive; some of them, as that the Broc's were of no importance, are strangely at fault. (See the author's "History of the Earls of Arundel" as to the origin and race of the Brocs.) The fact that a sister of this Robert Broc married William Albini, Earl of Arundel, was not known to these writers.

The lover of peaceful retirement from the cares of the world, if he can accept instead a scene of something like desolation, yet desolation green and beautiful, may enjoy a pleasant hour by stopping at the Beauchief or Dore station, on the railway between Sheffield and Chesterfield, and from one or other point by a footway on the east of the line, leading through beautiful meadow and forest scenery, make

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his way to the other—half way he will pass the ruins of Beauchief Abbey, once very famous and venerable. In themselves they present no very remarkable feature: part of a massive tower, of no particular beauty, with on each side of it a ruined Norman archway (evidently out of place, as if carried there) leading to nothing, and a little square remnant of the old Abbey of no symmetry or design, patched on to a broken tower exhibiting a wretched display of taste, fitted up with ultra-protestant high pews of the loose box kind, and with one or two mural tablets exhibiting the three pegs, the cant arms of the Pegge family, whilst there is curiously interposed a modern painted glass window of some beauty, and on the floor stands a genuine wooden dining table of the last century, which serves in lieu of an altar piece—a movable wooden table, suggestive of a side-board, which would delight the hearts of the school of Lord Penzance, for there is nothing about it likely to suggest sacred ideas; yet this is all that remains as a substitute for the great functions, the beautiful music, the gorgeous ritual, and the vast intellectual influence of the great Abbey of Beauchief, founded, as popular report still repeats—spite of learned pundits—in honour of the martyrdom of the great and holy martyr, St. Thomas á Becket. But if the mind and influence of the church is gone, the beautiful seclusion of the place is still preserved, and the grass is as green and fresh as when the Abbey was in its prime. Alas this green quiet is but a poor substitute for the intellectual activity and the boundless benevolence which for so many centuries pervaded the spot, for the Aroasian monks, assembled here by Robert fitz Ranulf, in the reign of Henry II., filled the little world around them with the example of their lives, with their active charity, and with their broad and distinctive teaching, and they might still have continued here even to these days, and done something, perhaps, to correct and control the rude manners of the degenerate descendants of the men of their own time; but this is all changed, because of the inveterate love of plunder of the great Reformers of the Church of England.

The fate of the family who, at the Reformation, absorbed the revenues and broad acres of this Abbey has not been particularly striking. They seem to have had some able men amongst them, and the name of Dr. Pegge, the genealogist, must ever be remembered with respect. But, alas, all that remains of them here is a few mural tablets, exhibiting their three pegs and a broken tomb, erected to one of them in the churchyard, showing how lightly their memory

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is preserved. Their unsightly mansion, built out of the stones of the old Abbey, is now neglected—for this place has not even the advantage of a resident squire, it having passed through a female heir into the hands of a family who have a better estate of their own, and who, perhaps, do not care to reside in this deserted quarter of the old monks. It is not, however, with the Abbey or its lay successors, that we have now to deal, but with the charters of its pious founders. Those of its first founders are probably lost, and copies of them only can now be found in the works of Pegge and Addy; but those of their successors—the Chaworth family, who were lords here in the reign of Henry III.—have fortunately been preserved, and they are now in the hands of the Rev. Mr. Pearson, the Rector of Norton, who most courteously permitted the author to inspect them, and very curious and precious they are. To the charter of Sir Thos. Chaworth, made about the time of Henry III., is appended a seal of singular beauty, upon which are displayed two coats of arms of the greatest interest to this inquiry.

William de Chaworth married the heiress of the Lords of Alfreton, the last of whom died early in the reign of Henry III. He at least was closely connected with Belvoir. He was a son or grandson of that Robert de Chaucis, whose relationship to the brother of the first Earl of Salisbury is said to be very clear, and who, without doubt, was one of the tenants of William Albini Brito, Lord of Belvoir of the old demesne; that is, of a date prior to the reign of King Stephen. It is indeed said the Chaworths used another coat, but in all their charters to Beauchief they adopted the arms of their predecessors in the Lordship of Alfreton. The seal of Thomas Chaworth, conferring these grants, affords evidence of a close connection with Belvoir. It has for supporters what appear to be very much like the eagles of the house of Percival, which were borne by the Albinis, as if—and it is most probable—the Percivals descended from them. The eagle, too, appears on a beautiful seal of Robert de Todeni, Lord of Aburna of the time of William Rufus and Henry I., whose grant of thirty sticks of eels (the rent of two mills at Aburna) to the Priory of Belvoir is still at Belvoir Castle, absolute proof of the high antiquity of coat armour. On the reverse of Thomas de Chaworth's seal is a lion passant, precisely similar in form to that of the Belvoir family, which was borne by Ralf Albini, of Aburna. To all the charters of the Chaworths to Beauchief, we find the Britos, of Walton, attesting witnesses, and with them the Daniels and Fol-

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jambes, of Tideswell, and the Annersleys, as well as the families of Steynesby and Heriz, with whom they were closely allied. It is not quite clear whether the Britos attested the foundation charter of Robt. fitz Ranulf, but inasmuch as they were benefactors of Beauchief at a date long prior to the accession of the Chaworths, it is most probable that they did so. At page 97-6 of the Chartulary there is a grant by Robert de Brito, with the consent of Robert, his son and heir, which was apparently confirmed by Hugh, son of Robert, about 1230. Amongst the witnesses to the foundation charter was one Roger fil Ranulf, who in all probability was the lord of Walton, as it was addressed to Richard Peche. Its date must have been between 1162 and 1183, as Becket was murdered 29th December, 1170. It was, of course, after that event. He was probably the son of Ralf Brito, the grantor, with Richard de Annersley, his son, of the Church of Felley to Welbec, and the Lord of Aburna before mentioned.

In Harl. MS., No. 3375, in the British Museum, is to be found a number of valuable entries relating to the Freschville half of the Musard Barony, some of which throw a great light upon this inquiry. In 32 Henry II., Hasculphas Musard held it; in 6 and 8 Richard I. Ralf Musard, the old fees being then assessed at £12. Amicia, widow of Ankerus de Freschville, daughter of Ralf, gave land to St. Trinity (Welbec?) in Stavely Woodthorpe, with the assent of Nicolas Musard, her brother, who was in priest's orders and rector of Staveley, and who had sons, but who were not allowed to inherit because by law they were bastards. (Lansdowne MSS. 207, f. 171.)

The second sister of Amicia de Freschville, Margaret, was the wife of John de Hibernia; and the third also married, and her daughter and heiress married William de Chelardeston. It is a remarkable circumstance that the reredos or altar piece of alabaster, which formerly graced Beauchief Abbey, has been preserved and is now in the possession of F. J. S. Foljambe, Esq., at Osberton, from the coat armour carved upon it, being Foljambe empaling a seme of fleur de lis, it would seem to be of the date of Sir Godfrey Foljambe of Darley and Bakewell; he died in 1376, and his widow, the lady Avena, daughter of Sir Thomas Ireland, of Hartshorne, by a daughter of Pagan Vilers, in 1388 erected a monument to his memory. This monument is in the same style as this altar piece; it is carved in alabaster, in alto relievo, and it is still remaining in Bakewell Church. In William Wryley's copy (taken in 1592) of Flower and Glover's Visitation of 1569 (Harl. MSS. 6592), it appears that

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at that date in the ruins of the glass of the Abbey of Beauchief there were three coats of arms—the three lions passant guardant (for England ?), the two chevrons for Alfreton, and a seme of fleur de lis for France—says that old writer, but no doubt the latter were for Ireland (Hibernia). The arms of Ireland are carved in the place of honour on the altar piece, whilst those of Foljambe are on the right of the centre shield, impaling both, from which it would appear that the donor was the lady, probably in her widowhood, in memory of her deceased husband. Curiously, however, neither the name of her husband nor her own is mentioned in the obituary. At the submersion—as the Elizabethan herald calls the great Reformation—Walton, in Chesterfield, which the Britos had given to Beauchief, returned to their descendants—the Foljambes—and with it, no doubt, on the spoliation of the Abbey, this remarkable reredos, the pious gift of their ancestors. The obituary commemorates Sir Thomas Foljambe, probably the witness to Sir Thomas Chaworth's charter, and the donor of Walton Church, for great honour is to be paid to him; for him a full service was to be said in the convent, with great commendation, and for him a mass was to be celebrated for ever at the altar of St. John the Baptist, possibly the altar from whence this reredos was taken.

The before-mentioned MS. (Harl. 3375) contains, under date Edward I., probably of Henry II., a very valuable account of Hubert fitz Ralf's barony; that is, it would seem of the Freschville moiety.

Ralf Freschville held five fees and one-tenth of one fee in Bonez Beadon, Scarclive, and Crich; Ralf fitz Ralf de Reresby, one fee in Essover; Roger de Somerville, one fee in Blackwell; John de Orreby (who married Isabella, daughter of Robert fitz Ranulf, the founder of Beauchief, or his son), one; Reginald de Annersley, two fees in Annersley; Robert Dethic, one-fourth part of a fee in Chilwell; the Abbot of Derley, two fees in Ripley; Simon fil Simon, half a fee in Middleton; and Mathew de Hathersage, half a fee in that place. This Simon, son of Simon, was probably de Kyme. He married Isabella, daughter and co-heir (Gerard de Glanville married the other co-heiress) of Thomas fitz Richard Coste, the founder of Welbec Abbey, and he left three daughters and co-heirs: Agnes, ux Walter de Fauconberg; Petronella, ux Stephen de Fauconberg; and Isabella, ux Walter de Rieboef; and it is probable that Simon fil Simon had a brother, Ralf, who held Wistanton under the family

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of Heriz. In the time of King John Robert de Amaori sued Simon de Kime, whom Walter de Reiboef and Isabella called to warranty concerning half a knight's fee in Blenburg, in Nottingham, of which Ivicia, his grandmother, was seized in the time of Henry II., which descended to Robert, her son, and to Ralf, his brother, father of the plaintiff. Simon said that Ivicia had an elder sister, Emma, who had issue Robert de Heriz, father of Ivo.

It seemed that amongst his knights who aided in the foundation of Lenton Priory, William Peverel, besides Roger Brito, already mentioned, and Robert Heriz, presently to be mentioned, had one named Erbert (possibly Fitz Hubert), who gave Gonulston to that foundation. He had a sister and co-heir, Emma, the wife of Ivo, son of Robert de Heriz, who was also a knight of William Peverel's, and benefited Lenton. This Ivo is recorded in the first great Roll of the Pipe (c. 1 Stephen) for a payment on account of Welgebi, in right of his wife. He obtained an interest in Gonulston and Keilmarsh, in Eckington, from which it would seem that Erbert must have been identical with Hubert fitz Ralf. The eldest son of Ivo de Heriz was William, who early in Henry II.'s reign appears to have forfeited his estates, but who, 20 Henry II., paid 100 marks to re-possess them. His only daughter and heiress married Sir Jordan Brito, of the Walton family, whose son, Sir Roger Brito, married Roberta, daughter of John, Lord Eyncourt or Deincourt, and had issue John Brito, who married Lettice, widow of Sir John Loudham, by her first husband. This lady had issue Sir John Loudham, who married Isabella, daughter and heiress of Sir Robert Brito, of Walton, whose daughter and heiress brought that estate to Sir Thomas Foljambe, by her second husband. She had issue a son, who died without issue, and an only daughter and heiress, Catherine, who married Sir John Caltoft, of East Bridgeford, Nottingham, and had issue Alice, who married Sir William Heath and Sir William Chaworth. The Heriz family held Wistanton (or Wiverton), which was part of Ralf fitz Hubert's barony, and the Abbot of Derley held it from them, and under them the family of Ralf fitz Simon held it. 29 Edward I., Inquis, p, m, of Nicolas Musard, it was found that Ralf de Freschville, son of Annora, his sister, was then 27 years old. There is a fine, dated 24 Henry III., between Matthew de Hathersage, and Annora, his wife, and the sister of Nicolas Musard respecting lands in Eyam and Sandiacre with Robert fil Ingleram, of Nottingham.

We have little, if any information, respecting the Britos, of Walton,

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from the time of Henry I. until, perhaps, that of Henry II., when a Robert Brito was lord of that place, who married Cecilia, the daughter of Robert de Derby, a son of William de Ferrers, Earl of Derby. This Robert seems to have been the father of several sons—of Roger, his successor, of Hugo, of Robert, and of Ralf. To Robert was granted Oggeston, who became the ancestor of a family of that name. He had at least two sons, William, his successor, and John. Ralf Brito, by grant, apparently of William fitz Walkelin, his uncle, settled at Hardwick, in the manor of Steynsby, and taking that name, became ancestor of the Hardwicks, of Hardwick Hall, whose ultimate heiress, the famous Bess Hardwick, married the Earl of Shrewsbury, and Sir William Cavendish, ancestor of the Dukes of Devonshire. Curiously the Derbyshire historians have failed to discover the ancestry of the Hardwicks for more than six generations, but the matter is clear beyond doubt from the charters of Ralf Brito, del Hertwick. The witnesses to this charter are Dno Willo de Heriz, Dno Robert de Harest (on), Robert de Wincon, Hugo de Walton (no doubt Hugo Brito, brother of the grantor), Peter fil Simon de Brimington, doubtless Peter (Brito), the tenant of William Brewer of the 14 Henry III., before mentioned; Robert de Oggeston (another brother of the grantor), Robert de Heriz, in Sutton-in-Dale; Rado de Sidenhall, Willo fil Willi fil Thomas, in Sutton; Willo de Plesslie, in ead; Roger de Somerville, Ralf, cleric, de Walton. (Seal, a fleur de lis.)

From the mention of both Lord William de Heriz, the first witness, and Robert de Heriz, of Sutton-in-the-Dale, it would seem at first sight that this must have been witnessed by Lord William Heriz, of South Wingfield, who was succeeded by his brother, Robert, in 26 Henry II.; but it appears that there was another Dominus, William Heriz, who, by Derbyshire genealogists, has been frequently confounded with him (no doubt his cousin), for he had custody of John, son of Ivo de Heriz, son of Robert of Wingfield, and answered for him during his minority. The deed is more probably of his date, and not that of the first-mentioned William de Heriz. He died without male issue, leaving an only daughter, Joan, who married, as before mentioned, Sir Jordon Brito.

Derbyshire county historians have made some curious mistakes with regard to the family of William fitz Walkelin, whom they assign as the ancestor in the male line of the Savage family, who succeeded them at Steynsby, but the smallest attention to the entries in the

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Pipe Rolls and Close Rolls of the time of King John would have brought out the fact that Robert de Salvagius, in 3 John purchased the heiress of William fitz Walkelin, and that William himself, instead of being of the race of Savage was a Ferrars, a younger son of William, Earl of Derby. Three magnificent charters, with the great seals attached of Henry II. and King John, still remain in fine preservation at Hardwick Hall, to attest the origin of his connection with the house of Steynsby, and the Chartulary of Derley Abbey supplied the requisite evidence to prove it.

There was a Ralf Brito in Essex, who held a knight's fee at Chigwell, Essex, under Richard de Lucy, Chief Justice, son of Hugh de Morville, between 2 and 10 Henry II., and who was himself a justice itinerant in 23 and 25 Henry II. He appears to have farmed the estates of Henry de Essex. He left a son, Robert, who married Philippa, daughter of Hubert, son of Geoffry de Manduit; his son and heir, William, who died about 19 Henry III., married a daughter of John de Grey, of Rutherford, sister of Walter de Grey, Archbishop of York, and niece of John de Grey, Bishop of Norwich.

The relationship of the Gernons and the Brewers is a very interesting one, and if properly traced out might be of value in illustrating the history of Chesterfield. The Gernons, of Essex, were a knightly family, long resident in that county, where also, contemporaneously resided a branch of the family of Brito, who, from their coat armour and other circumstances, must have been connected with the Britos, of Belvoir and of Walton, and this early connection between the two families may have arisen from the settlement either in Essex or in Derbyshire. The Gernons, like the Britos, of Walton, held their estates in that county, of the Peverels of the Peak, who were closely allied to the Peverels, of Essex, and London. The Gernons seem to have resided chiefly in Essex, and ultimately gave up their property to the Foljambes, who eventually succeeded to the inheritance of the Britos, of Walton, and who were probably of their race. The records of his Grace the Duke of Rutland, at Belvoir Castle (which accompanied the estates inherited by his ancestor, who married the co-heiress of Vernon, the Earl of Derby marrying the other co-heiress), prove that the Foljambes held Bakewell under the Gernons, the first-mentioned being Alanus Foljambe, who bore on his seal a fess between three escallops, the exact arms of the Britos, of Walton. To him succeeded the well-known Sir Godfrey Foljambe, who obtained grants at Bakewell

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from Sir William Gernon in 1346, and who was probably brother of Sir Alan. He changed his arms to a bend between six escallops, which the family of Foljambe ultimately used generally, and still use. The Heralds' accounts of the family of Gernon is singularly defective, nearly every portion of it being inaccurately stated. They derive it from Robert Gernon, who at the Conquest held lands in Hertfordshire and Gloucestershire, and in common with Ranulf Peverell held Stratford and Langley, in the county of Essex. Mathew Gernon, the alleged only son of Robert, is stated to have married Hodiurna, daughter of Sir William Sacville, and Ralf, their son, married the sister of William de Braose. This should probably be a later Ralf, and the lady a sister-in-law; for William de Braose married a daughter of William Brewer. It appears, however, from a suit, Anno. 7 Henry III., in the Rotuli Curiæ Regis, that Roger Gernon was sued by William Blundus concerning land of William Brewer's, which he Roger had with his wife. The Heralds derive Roger Cavendish, the father of the famous Lord Chief Justice of England, the ancestor of the Duke of Devonshire, from Geoffrey de Gernon, of Moore Hall, in Bakewell, of the time of Edward I. This is surely a curious error, for the Cavendishes were a well-known family in Suffolk centuries before the time of this Roger de Cavendish. Henry de Cavenas was a knight of the old feoffment of the Honour of Clare at the date of the first certificates of knight's fees, which gives him a tenure of the time of Henry I. He appears to have been followed by a Simon de Cavenides in the time of Henry II., by Godwin de Cavendish of the reign of Henry III. and in 16 Henry III. Walter de Cavendish was attorney for Hugh de Neville in Norfolk. Then we find John Cavendish in 8 Edward II. purchasing one of the several manors called Cavendish of John de Odensels. What relation he was to the Chief Justice does not appear. He was probably his grandfather. The first we hear of the Chief Justice is in the 33 Edward III., when he was appointed a justice for the county of Suffolk. In 37 Edward III. he, with others, gave to the Abbot of St. Edmundsbury lands in Magna Burton, Walesford, Hepworth, Rickenhall, and Fornham, St. Martin. In 41 Edward III. he held Conhagh, in Suffolk, of the Castle of Dover, which looks like an old Peverel connection. In 45 Edward III. he was appointed a justice of Eyre. In the same year he is mentioned in St. Alphage Cripplegate. Stephen, his brother, had been Lord Mayor of London, and was for many years member for the city in Parliament, and in 46 Edward

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III. John Cavendish was appointed Lord Chief Justice. His tragical fate in 5 Richard II. is well known, murdered by an explosion of popular wrath. Curiously he had been advanced to the highest office in the State in sympathy with one of popular admiration. His son, Andreas de Cavendish, who died 18 Richard II., seems to have held all the Cavendishes. He held the Cavendish manors generally called Impey, Collingham Hall, Overhall, and Kempsynge, as well as Fakenham Aspe, which appears to have been purchased by the Lord Chief Justice in 50 Edward III. It is possible, of course, that some of these manors were called Cavendish, after the Lord Chief Justice, who was one of the greatest men of his time, but some are known to have been of an earlier date, and the probability is that an important family of this name were settled in East Anglia from the earliest times. The loss of records, and the absence of any county history, has left this genealogy greatly in the dark, but doubtless if the histories of these several manors of Cavendish were traced, a proper pedigree of this distinguished family might be produced. This poor apology is here offered as a contribution towards the task, which is especially interesting to Chesterfield, since the family are lords of that manor to this day.

It would be interesting to learn whether the brothers Henry and Hugh Albiniaco, who held the Brewers' Manor of Sneinton, were of the Belvoir family. There seems strong presumption that they were identical with the Tibetots, that name possibly being another form of the town of Tibshelf, which was held by the Heriz family, before mentioned, who were closely allied to the Britos, it having formerly been held by their common lords, the Peverels. John, son of Ivo Heriz, gave several bovats of land there to Felley—a monastery which was greatly favoured by the Britos; so also did the Britos, of Walton, other lands in Chesterfield. The first of the name of Tibetot known to Dugdale was Walter de Tibetot, a knight of Earl Ferrers, who forfeited his lands 6 John, or perhaps previously. He was succeeded by Henry (possibly Henry Albiniaco), who died 34 Henry III., and he by Robert, who married Eva de Chaworth, now Daniel Pincerna, of King John (who was undoubtedly an Albini), had a brother Walter, who also forfeited his estates about that time. It is suggested that Walter Tibetot, and Walter Daniel and Walter Brito, of Odcombe, are identical. William Brewer, in the third year of John, gave forty marks for the lands of Walter Brito, then in the King's hands. Amongst the escheats of 6 Edward I., No. 110, there

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is a writ, but unfortunately the inquest is wanting, directed to the Sheriffs of Nottingham and Derby, to inquire whether Robert Tipetot and Thomas Folegaumbe and their ancestors from the time of the Conquest of England, had rented their hamlets of Elton and Middleton, in county Derby, at one mark; that is, they pay the said Robert half a mark for Elton, and the said Thomas half a mark for Middleton, per pulcre placitando, and whether William de Ferrers, from the time since Robert de Esseburn had been his senescal had received six marks a year for the said hamlets. Robert de Esseburn had been senescal at least as early as 36 Henry III., some twenty-six years previously. If the finding upon this inquest could be discovered it might settle this interesting question. The post-mortem inquisition taken some years after the death of the father of this Thos. Foljambe, called also Thomas, who died on the Sabbath after the Feast of St. Hilary, in the second year of King Edward I., shows that he held land in Wormhill by the service of keeping the Forest of Bapernam, a mill upon the river Weya, and a messuage and sixty acres of land at Tydeswell, and the hamlet of Little Hocklow, of Dom John Daniel, by the service of rendering annually six barbed arrows with fleches; the hamlet of Letton, of Margeria Dna de Ripley; Parva Longsden, of Richard Edensor; and Burton, in dominion of William Gernon, within the Manor of Middleton, twenty-eight shillings rent from William de Yholegrave and of Dominus Tipetoft, the mill of Elton doing service at the Court of Tutbury. The Subsidy Roll of 1 Edward III. shows that at that time John de Gernon was taxed upon £10. 10s., and Godfrey Foljambe upon £5; at the same time Thomas Foljambe, of Tideswell, paying upon £9; John upon £7, and Richard upon £6; whilst at Wormhill Robert paid upon £4.

The arms of Tibetot give no clue to the origin of the family. They were Argent a Saltire engrailed Gules, arms borne by the family of Farr or Ferrers. And the arms of Brewer are equally useless for this purpose. It will be seen at page 140, Deed No. 13, that according to Dr. Pegge on the seal of William Brewer attached to that deed was a mermaid, and we find from a paper contributed to the Proceedings of the Society of Antiquaries (Vol. VIII., No. VI., p. 533), by Dr. J. J. Howard, that to a charter exhibited to the Society, by the permission of Lord Arundel, of Wardour, of the same William Brewer, granting land to William, of Rouen (a surname taken by Berenger Todeni, of Belvoir, on his banishment), with a seal attached to it two inches in diameter, bearing

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a mermaid holding a merchild to her breast. The witnesses to this charter are: 1, Richard Flandrensis; 2, Richard de Grenville; 3, Richard fil Walter; 4, Ralf de Sachenville; 5, Robert de Campell (Campoll); 6, Hugo de Punchardon; 7, Godfrey de Aubermarle; 8, Robert de Hockesham; 9, Walter de Culum; 10, William de Nunel; 11, Ernaldo de la Waule; 12, Richard Lampie. Now, witnesses No. 1, 3, 4, 5, 7, 10 were witnesses to William Brewer's foundation charter of Torre Abbey, dated between 1196 and 1199; and amongst the witnesses to the charter of William Brewer to John, son of William Leke, cited by Dr. Pegge, were: Yvo de Heriz, who married Havise de Brewer, probably a granddaughter of the judge. Yvo himself died in the reign of King John; and Robert Brito, another witness, died before the 7th Henry III., for his son paid his relief for Walton that year. There is a charter to be found amongst those published by the Royal Historical Commission of a John Brewer, no doubt a son of the judge, upon the seal attached to which also appears the family mermaid.

The descent of the Manor of Chesterfield from the time of King Henry III. has not been uneventful. William Brewer, the grantor of the charter of 17 John, died, as before mentioned, about 11 Henry III., and his two sons, Richard and William, each died without issue, when his daughters became his co-heirs. Isabella, the wife of Baldwin Wake, obtained Chesterfield, Brimington, and Wittington as part of her inheritance, through Margaret Wake, the eventual heiress of this family. It passed to Edward Plantagenet, Earl of Kent, whose descendants possessed it for several generations. 26 Edward III. John, second son of Edmund, of Woodstock, by Alice, co-heiress of Edward, brought it to her husband, Richard Nevile, Earl of Salisbury. Isabella, Duchess of Clarence, one of the co-heirs of the Earl of Salisbury, gave it to George Talbot, Earl of Shrewsbury, in exchange for other lands. At the time of the Commonwealth it seems to have been in the hands of Viscount Mansfield, and subsequently the Earl of Shrewsbury sold it to William Cavendish, Duke of Newcastle, from whom it descended, through his daughter and heiress, to the Duke of Portland, who exchanged it for other lands with ancestors of the present Duke of Devonshire, who now holds it.

In conclusion, the author desires to express his obligation to the Dukes of Devonshire and Rutland, and to Mr. F. J. Savile Foljambe, of Osberton, for so kindly giving him access to their invaluable

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muniments, without which he could not possibly have arrived at so many historical facts of interest to this little work. His thanks are also due to the Rev. Mr. Pearson, Mr. G. S. Cockayne, Lancaster Herald; and to Mr. Swift, junior, for giving him access to MSS. For literary aid in solving some of the most interesting genealogical problems he has especially to thank Mr. Cecil G. S. Foljambe, of Cocklode, Notts., who kindly gave him access to valuable MSS., and also drew his attention to several of the most intricate matters connected with this inquiry, and assisted him in their solution. He has also to thank Mr. J. D. Leader, F.S.A.; Mr. Benjamin Bagshawe, Mr. Sidney O. Addy, and the Rev. J. T. Fowler for hints and suggestions during the progress of the work.

Springfield House,
Sheffield, 12th July, 1884.

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Works by the same Author.

THE HISTORY OF THE COMMON LAW OF GREAT BRITAIN AND GAUL,

FROM THE EARLIEST PERIOD TO THE TIME OF ENGLISH LEGAL MEMORY.

STEVENS & SONS, 119, CHANCERY LANE.

OPINIONS OF THE PRESS:–

The *Law Magazine and Review*, April, 1874.

"This work, the author assures us, embodies the labour of many years; and the subject is one of no small interest. It is the history of the common law of Great Britain and Gaul, from the earliest period to the time of legal English memory. The object is to exhibit the primitive sources of our common law in its earliest state, and with that view Gaul is included as well as Great Britain. The author's view, in a word, is, that the Saxons were barbarians, and that the elements of law and civilization to be found in this country after their invasion must have been derived from other sources. He traces them, in a great degree, to the lengthened Roman occupation of Britain, during which it undoubtedly attained a high degree of civilization. This is the view upheld by Mr. Finlason. For a writer on the history of our laws to begin by denying the genuineness of all early records of it, is indeed hopeless, and Mr. Yeatman is inconsistent in denying the genuineness of the Saxon's laws, whilst upholding those of Howell Dda. Nevertheless, Mr. Yeatman's work is, though unsound on these points, vigorous and lively, and embodies the results of much reading. This is only an instalment, being the first of four parts which are to be issued; and no doubt, when completed, it will contain much that is interesting and valuable."

The *Law Times*, 28th March, 1874.

"This is the first instalment of a work of apparently a similar character to Reeves' 'History of the English Law.' Of works of this class it is difficult to form a just opinion until the whole is presented to the reader, and always ungrateful to form a hostile one; because, whatever their demerits, they are monuments in a way of considerable industry. The present work, however, cannot be read without serious doubts arising that its excessive originality will disqualify it for a very wide success. Its scope is the 'investigation of the ancient law of the ancient Britons, with a view to establishing that the Roman civil law was in a great measure derived from it.' A large amount of learning is undoubtedly displayed by the present work, and also considerable skill in the art of writing lucidly, which ought to be employed more profitably than in advocating the most hopeless of newly-invented theories. On many questions, a superficial acquaintance with which is creditable, this work discloses much knowledge. The theory which this history seeks to establish is sufficiently startling to awaken all the incredibility of mankind."

The *Saturday Review* (Mr. E. A. FREEMAN), 28th February, 1874.

"We do not know whether the dedication to Lord Coleridge is by permission or without permission, but we should think that if the Chief Justice gets so far as the first paragraph of the preface, he must be inclined to echo that most sensible question of Achish, king of Gath, 'Have I need of madmen?' . . . . We must honestly confess that, on reading the explanatory preface, we had not the faintest notion what it all meant, and now that we have gone more fully through the book, we have, if possible, even less notion what Mr. Yeatman is trying to prove than we had before we began. He does not even bring us to the stage of knowing what it is that he wants to prove. . . . . He gives no sign of any study of original authorities; he shows a kind of reading, and what is more, a kind of sharpness. He shows a glimmering of reason, in one or two instances. His book is wild and worthless."

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AN INTRODUCTION TO THE STUDY OF EARLY ENGLISH HISTORY.

LONGMANS.

The *Scotsman*, Oct. 23, 1874.

From two columns of abuse we extract the following:—"It is one of the most amusing books that has appeared for a long time." "A serious discussion of the views and contentions would be a mere waste of time and space." "It is scarcely conceivable that a man with any pretension to the right reason to which Mr. Yeatman appeals should be able to blind himself to the unfairness and preposterous unsoundness of the method of argument employed." "Of what can seriously be called argument there is none." "What wonder that Mr. E. A. Freeman has suggested that Mr. Yeatman's views as to our origin and early history are mere lunacy?" "It is not probable that any historical work ever published contained within the same compass so many ridiculous errors, groundless assumptions, and ingenious misinterpretations as this."

The *Law Times*, October 24, 1874.

"Such a declaration of independence (as that made by the author) of the works of Freeman, Turner, Kemble, Stubbs, and others who have explored this part of our history, naturally prepared one for startling theories about well-understood facts—for a perplexity when all was plain, and doubt when all was certain. The present work outstrips all such anticipations. With all its imperfections, however, the work bears the marks of labour and ability."

The *Edinburgh Courant*, October 30, 1874.

"So much passion and acrimony are not to be found in any work on an historic subject known to us, except perhaps in the writings of Pinkerton. It is a work of much learning, giving evidence of deep study and careful research. Mr. Yeatman's work suggests many interesting subjects of enquiry. . . . . He has brought together facts which are of importance, and have not received due attention. His account of the early civilization of Britain before the Roman invasion is particularly interesting, and he has made it appear not improbable that the common law of England is derived from the ancient Britons, and has subsisted with little change under Roman, Saxon, Danish, and Norman rulers."

The *Daily News*, November 13, 1874.

"The object of the work appears to be to prove that the origin of English law and of the English race is British, and to revile the old Saxons, and the Protestant churches of Europe, in language of the most unmeasured virulence."

The *Englishman*, November 7, 1874.

"The author is a man of learning, and he uses his learning well. The subjects treated of are interesting to those who delight in antiquarian research, and they are dealt with skilfully, ably, and eruditely by Mr. Yeatman. His concluding essay on the 'Bench and Patronage' will be read by every one who values the independence of the Bar with deep interest."

The *Leeds Mercury*, 1874.

"Mr. Yeatman is entitled to credit for having conscientiously studied original documents."

The Metropolitan, 14th August, 1874.

"Old-fashioned people who believe in 'Mangnall's Questions,' 'Pinnock's Catechism of English History,' or in Hume and Smollett, will read this work with fear and trembling. We are not prepared to endorse all the views set forth in these pages, but the book is so immeasurably above the ordinary run of histories, which are mere repetitions of facts previously invented and judiciously arranged, that we must cordially advise every reader to study it intently."

Evening Standard, 12th Nov., 1874.

"This is a most original Work, overflowing with learning, and marked throughout with a complete mastery over the most minute details of this extensive subject. By far the most interesting portion of the Work is the patient research shewn by the Author into the origin of the English language, and his dissertation on our Saxon literature, laws, and customs. Some of the most dangerous errors of Drs. Marsh

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and Latham are freely exposed, and with success; with like freedom and success the historical errors of Mr. Freeman, Lord Macaulay, and Sir Edward Creasey, are brought home to their several authors."

The Press, Philadelphia, 20th Nov., 1874.

"The present volume is a remarkable example of original thought, historical research, philosophical deduction, and bold disregard of the merely traditional views of previous writers, who, taking too much for granted, have been content to travel in beaten tracks merely because they are old. To a large extent the Author ignores the claims of the Saxons as founders of either the language or the laws of England, and doubts whether, indeed, they had a distinct nationality. The Work is earnest and able."

The *Weekly Register*, 24th Oct., 1874.

"Here is certainly a book calculated to bring despair to all hitherto credulous readers of our national annals. Closing it after an attentive perusal, the student is almost tempted to regard as literally true the scornful remark which branded history as little better than an old almanack.

"According to Mr. Yeatman, the Saxons (of the Continent) have no claim whatever to either our laws or language. They had of their own no laws, no language, no literature. Obviously, almost avowedly, he is in an utter state of fog as to who these Saxons were, or whence they arrived as invaders and conquerors,

"For pointing out very clearly, indeed, how something may be done (in the way of working the mine of historical wealth at the Record Office), the historical students of England have, at any rate, much reason to be thankful to Mr. Yeatman, whose outspeaking in the last chapter in reference to the Record Office defects commands from us, in parting, our heartiest commendation."

The *Educational Times*, 1st Nov., 1874.

"This is, to say the least of it, a very remarkable book; in it the author, with rare temerity, attempts no less a task than the subversion of the whole of the received history of England anterior to the Norman Conquest.

"He has evidently studied his subject carefully, and he displays no little acumen and learning in setting forth his views."

The *Law Review* (English), Vol. III., N.S., p. 1139 (1874).

"Mr. Yeatman writes with all the spirit of a true antiquary. He has an ardent appreciation of his subject, and pursues it with a keenness and a zest known only to those who have for some time indulged in antiquarian research. His work turns up much fertile soil, and though we do not concur in his main views, yet we willingly recognise the general value of his treatise. Its main object seems to be to unearth those jural elements that lie deep at the base of our laws, and to assign them, if possible, a British rather than a Saxon origin. In this view he is undoubtedly nearer the truth than those writers—and they are legion, including the great Blackstone himself—who ascribe a Saxon origin to our Common Law.

"His description of the influence of Roman jurisprudence on modern law indicates much literary grace and skill. It is clear that Mr. Yeatman is a rhetorician and a poet of no mean order. If ever he divests his thoughts from the Common Law, a boundless and more fertile field will lie before him in the domain of general literature. He certainly has all the qualities that constitute a vigorous writer. There is not anything improbable in most of Mr. Yeatman's views. His work indicates great facility of composition, and an intimate familiarity with all the leading arcana of Celtic lore."

The *American Law Review*, Vol. IX. (1874-75), p. 123.

"Mr. John Pym Yeatman possesses at least two qualities in common with the distinguished Englishman whose name he bears—independence and courage; without the former he could not have written, without the latter he would hardly have published, the extraordinary book which forms the subject of this notice. Mr. Yeatman has produced a remarkable book."

The *Schoolboard Chronicle*, 17th July, 1875.

"It is a stout octavo book, treating the question at great length and in much detail; and although we cannot agree with the author in many of the more important of his conclusions, we find some new light thrown upon the general question of our mixed race and our more ancient institutions, and must pronounce the book very interesting."

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The *Freeman's Journal* (Dublin).

"Under this unpretending title Mr. Yeatman has given to the world a very valuable book. His introduction is not, as such works usually are, a mere transcript, more or less abridged, of the standard and approved authors on the subject. It is as remarkable for the boldness and originality of its views as it is for patient research and easy vigour of style. The author sets out with the theory that falsehood and exaggeration have mingled so largely with the writings of English historians, more especially since the Reformation, that it has become almost impossible to recognise the truth in its twisted, distorted form. He contends that it is not in the history of the Saxons, but in the ignored history of the Celtic race, that England has to look for the origin of all that she possesses that is valuable or noble—her language, her literature, her Common Law, and her Constitution. In the course of his very able work he boldly exposes the innumerable misrepresentations with which English history is underlaid, and advances many strong and ingenious arguments in support of the theory he has adopted. The book is characterised throughout by a patient, industrious, laborious, and minute research, and an honest desire to discover and declare the truth at all hazards and under all circumstances."

The SHEMETIC ORIGIN OF THE NATIONS OF WESTERN EUROPE, AND MORE ESPECIALLY OF THE ENGLISH, FRENCH, AND IRISH BRANCHES OF THE GAELIC RACE.

The *Metropolitan*, 30th Aug., 1879.

"Every one must own the clearness of style, the cogency of argument, the wealth of illustration in the way of learning, the depth of thought, and the perfect independence with which his history of England is sifted. To many, perhaps most people, the criticism on the Aryan Theory, etc., will seem like an unpleasant revelation, but we strongly suspect it will be found far from easy to answer this Book."

The *Yorkshire Post*, 3rd Sept., 1879.

"The general impression derived from a perusal of the Author's argument is, that he lays too much stress upon fancied analogies and questionable derivations, that he attaches too much importance to the existence amongst us of words, of names, of customs and peculiarities, as establishing an identity of the Early Britons with races which may indeed have contributed to people these Islands, but not to the extent that the Author would have us imagine."

The *Auckland Times* (1st Notice), 26th Sept., 1879.

"Mr. Yeatman is one who has had the courage to combat popular opinion on Philology; should the statements contained in the book lying before us be true, and to bear testimony without prejudice, we think it will be no light task to prove the basis of his theory to be untrue. The Oxford School of Philology is indubitably worthless, especially Max Müller's Aryanic Theory, which, in plain language, rejects the Mosaic account of the Early History of Mankind, and holds up the Sanscrit to be the parent of all languages."

The *Auckland Times* (2nd Notice), 3rd Oct., 1879.

"Chapter IV. on the Sources of Positive Evidence is not only eloquent, but the very acme of trenchant argument. This is the way he bowls over Mr. E. A. Freeman, a gentleman who not long ago assailed Mr. J. A. Froude most bitterly for distorting the truth."

NOTICES OF THE PRESS RELATING TO THE FIRST EDITION OF

THE EXPOSURE OF THE MISMANAGEMENT OF THE PUBLIC RECORD OFFICE.

Civil Service Gazette, Oct. 9, 1875.

"The statements of this volume fill us with indignation and surprise—abuses of patronage, a shamefully low rate of payment, so far as the working bees are concerned, and many other evils. The surprise and indignation of readers will be aroused. Mr. Yeatman has done good service in making this exposure."

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United Service Gazette, Oct. 30, 1875.

"This little book is a veritable bombshell. It seems to us that, if the author is both accurate and well informed, very grave abuses exist in the Record Office. The author has treated the subject with such extraordinary boldness that we think the authorities cannot allow the matter to rest; a commission to investigate the charges would, we think, be most satisfactory."

Civilian, Jan. 22, 1876.

"There is an absolute necessity of strict investigation into these fearful charges of public malversation. If Public Departments are to be thus publicly chastised by a man of Mr. Yeatman's standing without protection from those who rule them, we fail to see how their character for ordinary honesty can be otherwise regarded than as the veriest pretence."

THE MAYOR'S COURT OF LONDON PROCEDURE ACT, 1867,

(With Notes, and an outline of the Practice thereof, Forms of Procedure and Tables of Costs, with Observations upon the Judgment of the House of Lords in the case of the MAYOR OF LONDON *v.* COX).

WILDY & SONS. 1870.

The *Solicitor's Journal*, February 25, 1871.

"This work is a transcript of the Act, with notes, some of which are of considerable practical value. The dissertation on the case of the *Mayor of London* v. *Cox* shows signs of considerable critical ingenuity. The book before us will, we think, be a useful, handy book for practitioners in the Mayor's Court."

The *Times*, December, 1878.

"Mr. Yeatman's work has reached a second edition. The outline of the practice of the Court seems to be traced correctly and firmly, and the notes to the various sections full and clear. Much of Mr. Yeatman's argument is acute."

HISTORY OF THE HOUSE OF ARUNDEL, FROM THE TIME OF THE CONQUEST OF NORMANDY BY ROLLO THE GREAT.

MITCHEL & HUGHES, 140, WARDOUR STREET.

Extracts from the *Manchester Courier* of 30th March, 6th April, and 31st Aug., 1883 (by Mr. T. HELSBY, the learned Editor of OMEROD'S HIST. OF CHESHIRE).

FIRST NOTICE.

"In an age when the press teems with stately folios, lumbering weak-backed quartos, and even with octavos, of History, Genealogy, and Archæology, every one of taste and learning may be congratulated on the birth of a new folio of great originality and merit, and from the true historical standpoint. 'The History of the House of Arundel,' taking us back for a period of 1000 years, is one of those Works which may well have employed the valuable hours of a member of the learned profession to which the Author, Mr. Yeatman, belongs. The judicial faculties which he has brought to bear upon his subject have, on the whole, thrown so searching a light upon some long-buried points of national history as well as genealogical problems that the volume will be hailed by every scholar of unbiassed mind with the cordiality it deserves. 'The Early History of the House of Arundel' is that of many of the most Historic Families in this country and in France; and the bridge, which hitherto has been almost of the flimsiest character, is now fairly established upon the sound basis of numerous, if often fragmentary, facts—worked together, it may be, by some defective arguments, by much necessary repetition, dry and wearying details, but, on the whole, with a sagacity and acumen that redeems the work from all reproach.

"Nothing can well be of greater interest to the student than the genealogical connection of this kingdom with that of our continental neighbours and the old Duchies of Normandy and Brittany. Absolutely little of consequence was known (and this far from accurately) until the publication by the late distinguished Herald,

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Mr. Planché, of his 'William the Conqueror and his Companions.' Sir Francis Palgrave in his Work was barred from going into all those details of history so necessary to a just appreciation of the connection of the ruling houses of England and Normandy, but his eloquent sketches of the Duchy will never fade from the memory of the cultivated so long as history holds its domain in the human mind. Other gentlemen of repute have since written upon this subject more or less fully; but it seems to have remained for the present learned Author to unearth from the various archives of the French Republic, and from the great stores of materials in the Pipe Rolls and the Red Book of the Exchequer, and those in the possession of the Duke of Rutland and Lord Arundel of Wardour (extending in date from the reigns of the Dukes of Normandy regularly down to the time of Henry III. of England), a large amount of original information, which, although of so fragmentary a character in many cases as to necessitate the utmost industry, skill, and circumspection in using, has enabled Mr. Yeatman to give to the reader something approaching a sound and reliable Work on this interesting period of Anglo-Norman history."

SECOND NOTICE.

"To handle all the multitude of facts in this book (far exceeding in number, and often in abstruse significance any disclosed in the greatest *causes célèbre*), and to deal with them in a comprehensive manner—giving full effect to the numerous subtleties of meaning they often disclose, requires a grasp of intellect which can never be too fully appreciated.

"In conclusion, the least that can be said of 'The History of the House of Arundel' is, that it is an admirable collection of facts; and, if for this reason only, is very valuable, but its facts are skilfully arranged, and the learned Author has placed them in the most candid manner in every conceivable light before the reader, however laboured his efforts may occasionally appear; and after the judgment and research displayed in the work, if he has failed to command, he has certainly deserved success. As a volume for the earnest student of both direct and circumstantial evidence, it is to be warmly commended; and the many tabular pedigrees will repay the perusal of every one interested in the stream of history which connects so many past and present races with those of our own. We cordially congratulate Mr. Yeatman on the production of this admirable book."

THIRD NOTICE.

"Since our notice of the first two Parts of this valuable work, two others have been issued, completing the Volume, and in the examination of them the patient and appreciative reader will notice the same ability and learning which distinguished the preceding half of the work."

CRITICISM FROM THE "BRISTOL AND GLOUCESTERSHIRE ARCHÆOLOGICAL SOCIETY," VOL. VII., PART I.

"Mr. Yeatman, in the Work above mentioned, the first and second Parts of which are now before us, has undertaken a very difficult enterprise. The genealogy and early history of the great men who were the companions of William of Normandy in the Conquest of England is a field which, as yet, has been very imperfectly cultivated. The public records of our own country, with the exception of the Domesday Survey made in 1086, do not carry us back to within a century or so of the invasion, and the early chronicles have to be carefully studied and verified before they can be accepted as conclusive evidence. Genealogists in effecting this are chiefly dependent upon the ancient Cartularies of the great Monasteries of Normandy and Brittany. Unlike those of our own country, which, at the dissolution of the Religious Houses were either destroyed or scattered to the winds, these at the period of the French Revolution were carefully preserved. It is to such records Mr. Yeatman has chiefly had recourse as his authorities for the earliest or ante-conquestal portion of his Work, and for the later period to similar authentic documents preserved in the muniment rooms of the great houses in England, more especially, for his present purposes, at Wardour Castle and Belvoir Castle, to which, through the kind liberality of the noble owners, he has been granted free access, a privilege of great value in respect to the distinguished family whose history he has undertaken to write.

"The Author's researches at Belvoir Castle have resulted in his proving, by the most direct and indubitable evidence, that both the Ducal houses are descended from the above mentioned William Albini.

"The chapter on the settlement of the house of St. Sauveur, in the West of England, will be found of special interest to our readers, inasmuch as it gives the origin of many ancient families in the western counties, but the space at our disposal will not admit of our entering into details,

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"To compile an authentic pedigree of one ancient family is no light task, but to grapple with those of many of the Northern nobility and trace their descendants respectively from original authorities is a work of Herculean labour, and Mr. Yeatman's Book, when completed, will form a monument of industry and patient research. He seems to be well acquainted with the several personages who come within his range, and, throughout all their shifting scenes, maintains, upon the whole, a firm grasp of their individuality. The Work will prove a most useful contribution to English history and genealogy.

"We cannot, however, close these remarks without expressing our regret that Mr. Yeatman should have disfigured his important Work, in which we take much interest, by his unnecessary observations upon the management of the Public Record Office. In a postscript to the Preface to his Work he draws attention to 'the proposal for the destruction of documents (the pleadings and writs in law suits since 1715),' and in several places in his Work he casts reflections upon the Record Department with respect to 'pulping' valuable records.

"In a great depository of papers—it is well known to all who are acquainted with the nature of the Public Records—considerable accumulations must arise of formal and worthless documents, which, from time to time, it becomes necessary to remove to make room for what is of real value. And this was the case on the occasion to which Mr. Yeatman refers. The documents in question did not comprise any really material *pleadings in suits*, but consisted simply of formal writs and other process which could not be of real use to any one. These documents were recommended for destruction, after careful examination, by a Committee—in the manner prescribed by the Public Record Act, 1877 (40 and 41 Vict., c. 55)—of which Committee the Deputy Keeper is Chairman.

"We are sure Mr. Yeatman is labouring under some serious misapprehension, and feel constrained, in justice to the parties, to endeavour to remove the bias which Mr. Yeatman has, from this misapprehension, conceived.

"We hope to give a further notice of this Book at a future time, when it is more advanced."

NOTE.

[The Author has received permission from the writer of this review to publish his name—it is from the pen of Sir John Maclean, of Bicknor Court.

Sir John Maclean is entirely in error in supposing that this spoliation has been confined to the destruction of formal and worthless documents, of which there is no doubt an immense quantity carefully preserved which might happily be pulped (including some of the works published under the authority of the Master of the Rolls).

Sir John states that the documents destroyed did not comprise any really material pleadings in suits, but consisted simply of formal writs and other process which could not be of real use to any one.

This is a clear and definite issue, and the Author meets it by calling attention to the Schedules laid on the tables of the Houses of Parliament, which accurately describe the documents, and which of course Sir John Maclean has not seen. From an inspection it will be noticed that the destruction was not confined to formal writs and process of no value, for not only the writs but the pleadings were destroyed. Thousands of declarations, pleas, replications, and other legal process, of inestimable value, have been pulped—in some cases for the imbecile reasons that the series were imperfect, or that the Courts of Common Pleas and Exchequer did not follow the example of the Queen's Bench in preserving them. But then if the destruction had been confined to writs and formal process, it is erroneous to suppose they are of no value. The proof of a pedigree which perhaps entitles a litigant to an estate, or even a title, may depend upon the existence of a single writ.

It is the duty of the State to preserve all legal process, and it is so enacted by the Statute before mentioned. It is impossible fully to discuss this question in this form. The Author has embodied his views in a pamphlet which he has not withdrawn from circulation, but which he is not pressing upon the public, owing to the death of Sir George Jessel. The mischievous course, not initiated, but sanctioned by him, is being continued, and it will be for the benefit of the State if attention can be called to it, and a stop put to these proceedings. The Author will be happy to send a copy of this pamphlet to any one having this object in view who will supply him with his name and address. For the public good the matter ought to be sifted, and these very grave abuses be prevented for the future.]

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